

MAINE STATE LEGISLATURE

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LAWS

OF THE

STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWELFTH LEGISLATURE

SECOND REGULAR SESSION
January 8, 1986 to April 16, 1986

SECOND SPECIAL SESSION
May 28, 1986 to May 30, 1986

AND AT THE

THIRD SPECIAL SESSION
October 17, 1986

PUBLISHED BY THE DIRECTOR OF REVISOR OF STATUTES IN
ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

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

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
SECOND REGULAR SESSION
of the
ONE HUNDRED AND TWELFTH LEGISLATURE
1985

tary by January 17, 1986 April 1, 1988, as held for the benefit of the Passamaquoddy Tribe:

The lands of Great Northern Nekoosa Corporation located in T.1, R.8, W.B.K.P. (Lowelltown), T.6, R.1, N.B.K.P. (Holeb), T.2, R.10, W.E.L.S. and T.2, R.9, W.E.L.S.; the land of Raymidga Company located in T.1, R.5, W.B.K.P. (Jim Pond), T.4, R.5, B.K.P.W.K.R. (King and Bartlett), T.5, R.6, B.K.P.W.K.R. and T.3, R.5, B.K.P.W.K.R.; the land of the heirs of David Pingree located in T.6, R.8, W.E.L.S.; any portion of Sugar Island in Moosehead Lake; the lands of Prentiss and Carlisle Company located in T.9, S.D.; any portion of T.24, M.D.B.P.P.; the lands of Bertram C. Tackeff or Northeastern Blueberry Company, Inc. in T.19, M.D.B.P.P.; any portion of T.2, R.8, N.W.P.; any portion of T.2, R.5, W.B.K.P. (Alder Stream); the lands of Dead River Company in T.3, R.9, N.W.P., T.2, R.9, N.W.P., T.5, R.1, N.B.P.P. and T.5, N.D.B.P.P.; any portion of T.3, R.1, N.B.P.P.; any portion of T.3, N.D.; any portion of T.4, N.D.; any portion of T.39, M.D.; any portion of T.40, M.D.; any portion of T.41, M.D.; any portion of T.42, M.D.B.P.P.; and the lands of Diamond International Corporation, International Paper Company and Lincoln Pulp and Paper Company located in Argyle; and the lands of the Dyer Interests in T.A.R.7 W.E.L.S., T.3 R.9 N.W.P., T.3 R.3 N.B.K.P. (Alder Brook Township), T.3 R.4 N.B.K.P. (Hammond Township), T.2 R.4 N.B.K.P. (Pittston Academy Grant), T.2 R.3 N.B.K.P. (Soldiertown Township), and T.4 R.4 N.B.K.P. (Prentiss Township).

Effective July 16, 1986.

CHAPTER 748

S.P. 956 - L.D. 2396

AN ACT to Strengthen Professional Regulation.

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

Sec. 1. 4 MRSA §1151, sub-§2, as amended by PL 1983, c. 171, §1, is further amended to read:

2. Licensing jurisdiction. Except as provided in Title 5, section 10004; Title 10, section 8003-A; Ti-

tle 29, chapter 17, Title 32, chapter 59; and Title 35, section 13-A, the Administrative Court shall have exclusive jurisdiction upon complaint of an agency or, if the licensing agency fails or refuses to act within a reasonable time, upon complaint of the Attorney General, to revoke or suspend licenses issued by the agency, and shall have original jurisdiction upon complaint of a licensing agency to determine whether renewal or reissuance of a license of that agency may be refused.

Notwithstanding any other provisions of law, no licensing agency shall may have the authority to reinstate or otherwise affect a license suspended, revoked or modified by the Administrative Court pursuant to a complaint filed by the Attorney General, without the approval of the Attorney General.

Sec. 2. 4 MRSA §1151, sub-§2-A, as enacted by PL 1983, c. 171, §2, is repealed and the following enacted in its place:

2-A. Appellate jurisdiction. The Administrative Court shall have exclusive jurisdiction to review disciplinary decisions of occupational licensing boards and commissions taken pursuant to Title 10, section 8003. The Maine Administrative Procedure Act, Title 5, chapter 375, subchapter VII, shall govern this procedure as far as applicable, substituting "Administrative Court" for "Superior Court."

Sec. 3. 5 MRSA §10051, sub-§1, as amended by PL 1983, c. 818, §1, is further amended to read:

1. Jurisdiction. Except as provided in section 10004; Title 10, section 8003; Title 29; Title 32, chapter 59; and Title 35, section 13-A, the Administrative Court shall have exclusive jurisdiction upon complaint of any agency or, if the licensing agency fails or refuses to act within a reasonable time, upon complaint of the Attorney General to revoke or suspend licenses issued by the agency and shall have original jurisdiction upon complaint of an agency to determine whether renewal or reissuance of a license of that agency may be refused.

Sec. 4. 5 MRSA §10051, sub-§3, as enacted by PL 1983, c. 171, §4, is repealed and the following enacted in its place:

3. Appellate jurisdiction. The Administrative Court shall have exclusive jurisdiction to review disciplinary decisions of occupational licensing

boards and commissions taken pursuant to Title 10, section 8003. The Maine Administrative Procedure Act, chapter 375, subchapter VII, shall govern these proceedings as far as applicable, substituting "Administrative Court" for "Superior Court."

Sec. 5. 5 MRSA §12004, sub-§1, ¶A, sub-¶(3-A) is enacted to read:

(3-A) Board of Licensing \$30/Day 32 MRSA §271
of Auctioneers

Sec. 6. 5 MRSA §12004, sub-§1, ¶A, sub-¶¶(17), (18) and (32-A) are repealed.

Sec. 7. 5 MRSA §12004, sub-§1, ¶A, sub-¶(40), as enacted by PL 1985, c. 295, §14, and c. 496, Pt. A, §1, is repealed and the following enacted in its place:

(40) Board of Underground Expenses only 32 MRSA
Oil Storage Tank §10001
Installers

Sec. 8. 5 MRSA §12004, sub-§1, ¶A, sub-¶(41) is repealed.

Sec. 9. 5 MRSA §12004, sub-§10, ¶A, sub-¶¶(23-A) and (23-B) are enacted to read:

(23-A) Environment: Advisory Board for Expenses 12 MRSA
Natural Re- the Licensing of Only §7301
sources Guides

(23-B) Environment: Junior Maine Expenses 12 MRSA
Natural Re- Guides and Trip Only §7302
sources Leaders' Curri-
 culum Advisory
 Board

Sec. 10. 5 MRSA §12004, sub-§10, ¶A, sub-¶(44-A) is enacted to read:

(44-A) Human Ser- Advisory Board for Expenses 22 MRSA
vices: Pub- Licensure of Water Only §2624
lic Health Treatment Plant
 Operators

Sec. 11. 5 MRSA §12004, sub-§10, ¶A, sub-¶(66) is repealed.

Sec. 12. 5 MRSA §12004, sub-§13, ¶A, sub-¶(3-A) is enacted to read:

<u>(3-A) Joint Committee of Licensure-Certifi- cation for School Psychological Ser- vices</u>	<u>See subsection 1, paragraph A, sub- paragraph (33) and subsection 8, para- graph A, subpara- graph (3)</u>	<u>32 MRSA §3840</u>
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Sec. 13. 5 MRSA §12015, sub-§3 is enacted to read:

3. Occupational or professional licensing boards; preauthorization review. Any joint standing committee of the Legislature which considers legislation to establish a board to license or otherwise regulate an occupational profession not previously regulated or to substantially expand the scope of the functions or practices regulated by an existing occupational or professional licensing board shall evaluate whether the occupation should be regulated or further regulated. Any recommendation to the full Legislature for the establishment or expansion of jurisdiction of such a board shall include a concise written report addressing:

A. The nature of the potential harm to the public if the occupation or activity is not regulated and the extent to which there is a threat to the public health or safety;

B. The extent to which existing legal remedies are inadequate to prevent or redress the kinds of harm potentially resulting from nonregulation;

C. The extent to which the public is guided in selecting competent practitioners by private certifications, membership in professional or occupational associations or academic credentials;

D. The extent to which the occupation or profession has made efforts to regulate itself by adoption of standards of performance, a code of ethics or methods of resolving disputes with consumers of their services;

E. The nature of the standards proposed for granting a license, as compared with the standards adopted in other jurisdictions, and the authority of the proposed regulatory board to amend those standards or establish new standards;

F. The qualifications of members of the proposed regulatory board; and

G. The extent to which the harms expected to result from continued nonregulation may reasonably be expected to be reduced by the program of regulation proposed.

Sec. 14. 10 MRSA Pt. 9, first 2 lines are repealed and the following enacted in their place:

PART 9

DEPARTMENT OF PROFESSIONAL AND FINANCIAL

REGULATION

Sec. 15. 10 MRSA §8001, as repealed and replaced by PL 1985, c. 233, §2; c. 288, §2; and c. 389, §6, is repealed and the following enacted in its place:

§8001. Department; organization

There is created and established the Department of Professional and Financial Regulation, in this chapter referred to as the "department," to regulate financial institutions, insurance companies, commercial sports, grantors of consumer credit and to license and regulate professions and occupations. 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;

Pilotage Commission, Maine State;

Real Estate Commission;

Running Horse Racing Commission, State;

Arborist Examining Board;

Auctioneers, Board of Licensing of;

Barbers, State Board of;

Commercial Driver Education, Board of;

Dietetic Practice, Board of Registration of;

Electricians' Examining Board;

Foresters, State Board of Registration for Professional;

Funeral Service, State Board of;

Geologists and Soil Scientists, State Board of Certification for;

Hearing Aid Dealers and Fitters, Board of;

Manufactured Housing Board;

Nursing Home Administrators Licensing Board;

Occupational Therapy Practice, Board of;

Oil and Solid Fuel Board;

Physical Therapy, Board of Examiners in;

Plumbers' Examining Board;

Psychologists, State Board of Examiners of;

Respiratory Care Practitioners, Board of;

Social Worker Registration, State Board of;

Speech Pathology and Audiology, Board of Examiners on; and

Substance Abuse Counselors, Board of Registration of.

Sec. 16. 10 MRSA §8002, sub-§5, as repealed and replaced by PL 1975, c. 767, §9, is amended to read:

5. Liaison. Act as a liaison between among the bureaus, boards and commissions within and affiliated with the department and act as liaison between them and the Governor.

Sec. 17. 10 MRSA §8002, last ¶, as repealed and replaced by PL 1977, c. 564, §49, is amended to read:

The commissioner shall not have the authority to exercise or interfere with the exercise of discretionary regulatory or licensing authority granted by statute to the bureaus, boards or commissions within or affiliated with the department ~~set forth in section 8001.~~

Sec. 18. 10 MRSA §8003, sub-§5, as repealed and replaced by PL 1983, c. 553, §13, is amended to read:

5. Authority of bureaus, boards or commissions. Nothing in this section may be construed to diminish or deprive any bureau, board or commission within the department of its statutory duty and sole authority to regulate its profession, occupation or industry.

In addition to authority otherwise conferred, unless expressly precluded by language of denial in its own governing law, each licensing board and commission within the department may:

A. Suspend a violator's license for up to 90 days, or impose a civil penalty of up to \$500, for any violation of the applicable laws, rules or license terms under its jurisdiction; or

B. Execute a consent agreement, with the consent of all parties and the counsel to the licensing board or commission, to resolve any complaint or investigation without further proceedings. Any remedy that is otherwise available by law may be achieved by consent agreement, including temporary or permanent surrender of an occupational license. A consent agreement is not subject to review or appeal. A consent agreement is enforceable by an action in Superior Court.

The jurisdiction to suspend occupational licenses conferred by this subsection shall be concurrent with that of the Administrative Court. Civil penalties shall be paid to the Treasurer of State.

Any nonconsensual disciplinary action taken under authority of this subsection may be imposed only after a hearing conforming to the requirements of Title 5, chapter 375, subchapter IV, and shall be subject to judicial review exclusively in the Administrative Court in accordance with Title 5, chapter 375, subchapter VII, substituting the term "Administrative Court" for "Superior Court," notwithstanding any other provision of law.

Sec. 19. 10 MRSA §8003-A is enacted to read:

§8003-A. Complaint investigation

In aid of their investigative authority, all boards and commissions within or affiliated with the department may issue subpoenas in the name of the relevant licensing board or commission, in accordance

with the terms of Title 5, section 9060, except that the authority shall apply to any stage of an investigation and shall not be limited to an adjudicatory proceeding.

Licensing boards and commissions within or affiliated with the department, upon disposition of each complaint and investigation, shall make such disposition available to the public.

With respect to any occupation within or affiliated with the department, the department may join or subscribe to any national disciplinary record system and report disciplinary actions taken within this State to any such system.

Sec. 20. 12 MRSA §7301, sub-§1, as amended by PL 1983, c. 812, §89, is further amended to read:

1. Examining board. A The Advisory Board of Examiners for the Licensing of Guides, established by Title 5, section 12004, subsection § 10, shall consist of the following:

A. ~~The commissioner or such~~ One subordinate officer of the department as designated by the commissioner ~~may designate~~;

B. Two wardens of the department; and

C. A representative of the public to be appointed by the Governor for a term of 3 years. The public member shall be compensated as provided in Title 5, chapter 379.

Sec. 21. 12 MRSA §7301, sub-§1-A, as amended by PL 1983, c. 797, §9, is further amended to read:

1-A. Rules. The commissioner, with the advice and consent of the advisory board of examiners, shall make such rules pertaining to the licensing of guides as he deems necessary, including safety standards to provide the clients of guides reasonable protection from hazards.

Sec. 22. 12 MRSA §7301, sub-§3, as repealed and replaced by PL 1983, c. 100, §2, is amended to read:

3. Application. Any person wishing to be licensed as a Maine guide shall submit an application on such forms as the commissioner may provide.

In addition to other relevant information, the commissioner may require statements that the applicant

is competent; has no habitual intemperance in the use of alcohol, habitual use of narcotic, hypnotic or other drugs listed as controlled substances by the Drug Enforcement Administration; and has not received and retained a fee from a party and then failed to meet that party as agreed or failed to provide the services agreed to.

The commissioner may adopt rules to establish standards of competency which shall be provided to each applicant and other rules necessary to administer this subsection.

Failure or refusal to satisfactorily answer any question in the application shall be a basis for denying the application.

The board commissioner shall act on all applications within 5 working days of receipt, and shall notify all applicants at least 2 weeks prior to the examination.

Sec. 23. 12 MRSA §7301, sub-§4, as amended by PL 1983, c. 100, §3, is further amended to read:

4. Examinations. All persons who have not held a guide's license prior to January 1, 1980, shall be required to pass an examination as directed by the board of examiners commissioner. Examinations shall be held in areas designated by the commissioner.

In addition, the commissioner may require any licensed guide to be examined or reexamined if the commissioner receives written complaint and upon investigation believes that the statements made by the applicant on his application are no longer true.

Sec. 24. 12 MRSA §7302, as amended by PL 1985, c. 304, §15, is further amended to read:

§7302. Junior Maine guides and trip leaders; curriculum advisory board

1. Advisory board. The commissioner, as authorized by Title 5, section 12004, subsection 10, shall appoint a board of 5 members, to be known as the "Junior Maine Guides and Trip Leaders' Curriculum Advisory Board." The board shall consist of one member from the Department of Inland Fisheries and Wildlife, one member from the Department of Human Services and 3 public members, one of whom shall be a Maine camp director. The public members shall be compensated as provided in Title 5, chapter 379. Ap-

pointments to the board shall be for 3 years or until successors are appointed.

2. Requirements. The board shall hold such meetings as may be necessary and shall advise the commissioner on adoption of rules for the administration of this section and section 7303. ~~The~~ With the advice of the board, the commissioner shall establish standards of requirements and methods of ascertaining fitness of candidates for a junior Maine guide certificate. ~~The board and~~ shall also adopt, approve and review trip leaders' safety course curriculum which shall include, but not be limited to, training in first aid and water safety, including lifesaving techniques, as appropriate, and trip leaders' qualifications under the special application procedure in section 7303.

3. Eligibility for junior guides. To qualify as a junior guide, a person shall be 14 years of age or older and under 18 years of age and shall pass the required examinations. A junior guide permit shall be presented by the commissioner to those who qualify.

4. Restrictions.

A. No junior guide ~~shall~~ may receive remuneration for services; and

B. No junior guide ~~shall~~ may compete in any way with regular Maine guides.

Sec. 25. 22 MRSA §2621, as amended by PL 1983, c. 819, Pt. A, §55, is further amended to read:

§2621. Definitions

As used in this subchapter, unless the context otherwise indicates, the following words have the following meanings.

1. Board. "Board" means the Advisory Board for Licensure of Water Treatment Plant Operators referred to in this subchapter.

2. License. "License" means a license issued by the ~~board~~ commissioners stating that the applicant has met the requirements for the specified operator classification.

Sec. 26. 22 MRSA §2624, as amended by PL 1985, c. 295, §§35 and 36, is further amended to read:

§2624. Advisory Board of Licensure

The Governor shall appoint a an Advisory Board of for Licensure of Water Treatment Plant Operators, as authorized by Title 5, chapter 379, which shall be composed of 6 persons as follows: Two operators who shall be licensed under this chapter, with one of these holding a license of the highest classification issued by the board; one person who shall be from the Department of Human Services, as the commissioner may recommend; one person who shall be a water utility management representative; one person who shall be an educator whose field of interest is related to water supply; and one member of the general public.

Each member of the board, with the exception of the ex officio member from the Department of Human Services, shall be appointed for a 3-year term. Vacancies shall be filled by appointment of the Governor for unexpired terms.

Members of the board, shall elect from their number a chairman at the first meeting of each year. ~~On all matters before the board, the chairman may vote only in case of a tie among the other members present and voting. Thereafter, annually, a chairman shall be elected.~~ The Department of Human Services representative of the board shall serve as secretary of the board and be responsible for maintaining records and providing administrative support.

The board shall design and the commissioner shall hold at least one examination each year at a time and place designated by ~~them~~ for the purpose of examining candidates for licensure. ~~Additional meetings~~ Meetings of the board may be called by the chairman, or by him at the request of any other 2 members, as may be necessary to carry out this chapter.

Members of the board shall be compensated according to Title 5, chapter 379.

The commissioner, with the advice of the board, shall license persons to supervise the operation of a public water system or of a part of a system.

The ~~board~~ commissioner, with the advice of the ~~commissioner board,~~ shall establish by regulation the qualifications, conditions and licensing standards and procedures for the licensure of individuals to act as operators.

Sec. 27. 22 MRSA §2625, as amended by PL 1983, c. 819, Pt. A, §55, is further amended to read:

§2625. Licenses

The board commissioner shall issue biennial licenses to individuals to act as operators. The license shall indicate the classification level of the systems or parts of systems for the operation of which the individual is qualified to act as an operator.

The board commissioner may file a complaint with the Administrative Court to revoke a license of an operator when ~~the board~~ he determines that the operator has practiced fraud or deception; that he has been negligent in that reasonable care, judgment or the application of his knowledge or ability was not used in the performance of his duties; or that the operator is incompetent or unable to perform his duties properly.

The licenses of operators who terminate their employment at a public water system shall remain renewable for 3 years. After 3 years, the licenses shall be automatically invalidated. Operators whose licenses are invalidated under this section may be issued new licenses of a like classification provided appropriate proof of competency is presented to the board commissioner.

This chapter shall not be construed to effect or prevent the practices of any other legally recognized profession.

When the unexpired term of license of an applicant is or will be more than one year at the time of licensure, the board commissioner may require the applicant to pay an additional fee not to exceed 1/2 the biennial license fee.

Applications for a first examination shall be received by the board chairman at least 5 days prior to ~~a scheduled meeting of the board~~ the examination. The passing grade on any portion of the examination shall be not less than 70%. A candidate failing one examination may apply for reexamination, which may be granted upon payment of a fee established by ~~the board~~ regulation. Any candidate for registration having an average grade of less than 50% may not apply for reexamination for 6 months.

Sec. 28. 22 MRSA §2625-A, as enacted by PL 1983, c. 819, Pt. A, §55, is amended to read:

§2625-A. Renewals

All licenses shall expire on December 31st of each biennial period and may be renewed thereafter for 2-year periods without further examination, upon the payment of the proper renewal fee as set forth in the board's rules. Any person who fails to renew his license within the 6-month grace period following the expiration date shall be required to take an examination.

The board commissioner shall notify everyone registered under this subchapter of the date of expiration of his license and the fee required for its renewal for a 2-year period. The notice shall be mailed to the person's last-known address at least 30 days in advance of the expiration date of his license.

Sec. 29. 22 MRSA §§2626, 2628 and 2629, as amended by PL 1983, c. 819, Pt. A, §55, are further amended to read:

§2626. License from outside of Maine

The board commissioner, upon application therefor, may issue a license without examination, in a comparable classification, to any person who holds a license in any state, territory or possession of the United States or any country, providing the requirements for licensure of operators under which the person's license was issued does not conflict with this chapter and in the opinion of the commissioner, with the advice of the board, are of a standard not lower than that specified by regulations adopted under this chapter.

§2628. Rules

The board commissioner, with the advice of the commissioner board, in accordance with any other appropriate state laws, shall make such rules as are reasonably necessary to carry out the intent of this subchapter. The rules shall include, but are not limited to, provisions establishing requirements for licensure and procedures for examination of candidates and such other provisions as are necessary for the administration of this subchapter.

§2629. Fees

The application fees, biennial renewal fees and reinstatement fees shall be established by the board

commissioner by rule and shall be based upon different classifications of water treatment systems and the levels of competence to operate various water systems. The application fee shall not exceed \$35, and the biennial renewal fee shall not exceed \$30. The revenues derived from the fees shall be deposited by the board in a special account to be used to defray the expenses incurred by the board. Revenues derived from applicants failing the examination shall be retained by the board.

Sec. 30. 32 MRSA §271, as amended by PL 1985, c. 389, §9, is repealed and the following enacted in its place:

§271. Board of Licensing of Auctioneers

The Board of Licensing of Auctioneers, as established by Title 5, section 12004, subsection 1, shall be composed of 3 members, 2 of whom shall be auctioneers and one of whom shall be a public member. Members shall be compensated according to Title 5, chapter 379.

Appointments shall be made by the Governor for 3-year terms, with no person being eligible to serve more than 3 full consecutive terms, provided that for this purpose only a period actually served which exceeds 1/2 of the 3-year term shall be deemed a full term. Upon expiration of a member's term, he shall serve until his successor is qualified and appointed. The successor's term shall be 3 years from the date of the expiration, regardless of the date of his appointment. Any vacancy shall be filled by appointment for the unexpired term. A board member may be removed by the Governor for cause.

The board shall meet at least once a year and at such other times as the board deems necessary.

The board may, in accordance with the procedures established by the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter II, adopt such rules as may be reasonably necessary for the proper administration of this chapter.

Sec. 31. 32 MRSA §271-A, as enacted by PL 1983, c. 824, Pt. S, is amended to read:

§271-A. Disposition of fees

All fees received by the commissioner under this chapter shall be paid to the Treasurer of State to be

used for carrying out Title 10, chapter 901 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 purpose in the following fiscal years.

Sec. 32. 32 MRSA §273, as amended by PL 1983, c. 413, §15, is further amended to read:

§273. Resident application; fee

Every resident person in this State desiring to do business as an auctioneer, who satisfies the Commissioner of Business Regulation, hereinafter referred to as the commissioner, or an agent designated by him, board that he has knowledge of the laws of this State pertaining to auctions and sales, the ethics and practices of auctioneers, the laws relating to the record of sales of used merchandise and such other related subjects as the commissioner board may select, upon application in form designated by the commissioner board, shall receive a license to conduct auctions. The original application shall be accompanied by 2 letters of recommendation as evidence of ethical business practice.

The commissioner board may establish an application fee and an examination fee in amounts which are reasonable and necessary for their respective purposes.

The applicant shall furnish evidence of a surety bond payable to the Treasurer of State in the amount of \$10,000 issued by a surety company approved by the Bureau of Insurance and licensed to do business in the State of Maine.

The application and supporting information shall be kept on file together with a record of all licenses issued. The license fee shall be \$50 for a biennium and the original license shall be effective from date of issue until March 31st of the biennial expiration or at any date which the commissioner board designates. Original licenses effective for less than one year for the biennial licensing period shall be \$25.

Sec. 33. 32 MRSA §276, as amended by PL 1983, c. 413, §17, is further amended to read:

§276. Nonresident licensure

Every nonresident person desiring to do business as an auctioneer in this State shall obtain an auc-

tioner's license. The ~~commissioner~~ board may issue a license to any nonresident upon fulfillment of the same application requirements as those set forth for resident auctioneers.

In addition, an applicant licensed to conduct auctions in the state in which he resides shall furnish proof of that licensure to the ~~commissioner~~ board.

Sec. 34. 32 MRSA §278-A, as enacted by PL 1983, c. 413, §19, is amended to read:

§278-A. Investigations; hearings; license suspension or revocation

1. Investigations. The commissioner shall investigate, or cause to be investigated, all complaints made to him and all cases of noncompliance with or violation of this chapter.

2. Hearings. Hearings may be conducted by the ~~commissioner~~ before the board to assist with investigations, to determine whether grounds exist for suspension, revocation or denial of a license, or as otherwise deemed necessary by the ~~commissioner~~ to the fulfillment of his responsibilities under this chapter.

The ~~commissioner~~ board shall not refuse to renew a license for any reason other than failure to pay a required fee unless he has afforded the licensee has been afforded an opportunity for an adjudicatory hearing. The ~~commissioner~~ board shall hold an adjudicatory hearing at the written request of any person who is denied a license without a hearing for any reason other than failure to pay a required fee, provided that the request for hearing is received within 30 days of the applicant's receipt of written notice of the denial of his application, the reasons therefor and his right to request a hearing. Hearings shall be conducted in conformity with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV, to the extent applicable. The ~~commissioner~~ board may subpoena witnesses, records and documents in any hearing he it conducts.

3. Refusal to issue or renew; suspension or revocation. The ~~commissioner~~ board may suspend or revoke a license pursuant to Title 5, section 10004. In addition, the ~~commissioner~~ board may refuse to issue or renew a license or the Administrative Court may revoke, suspend or refuse to renew a license for any of the following reasons:

- A. Conviction of the licensee of a violation of the Maine Criminal Code, Title 17-A, chapter 15, 19 or 37 or of a Class A, Class B or Class C crime thereunder or of a felony under federal law, subject to the limitations of Title 5, chapter 341;
- B. Failure to comply with or properly maintain records required by Title 15, section 456;
- C. Failure, within reasonable time, to account for or remit any moneys coming into his possession which belong to others; or
- D. Any act in violation of this chapter.

Sec. 35. 32 MRSA §352, sub-§1, as enacted by PL 1983, c. 758, §4, is amended to read:

1. Board to administer, coordinate and enforce.
The board shall administer, coordinate and enforce this chapter, evaluate the qualifications and supervise the examinations of applicants for registration under this chapter and shall, at its discretion, investigate allegations of violations of this chapter.

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

Any member or employee of the board may enter and make reasonable examination of any barber shop during business hours for the purpose of ascertaining whether or not the rules are being observed.

The board shall submit to the Commissioner of Business, Occupational and Professional and Financial Regulation its budgetary requirements in the same manner as is provided in Title 5, section 1665.

The commissioner may require the board to be accessible to the public for complaints and questions during regular business hours, to maintain copies of all application materials with the department and to provide any information the commissioner requires in order to assure that the board is operating administratively within the requirements of this chapter.

Sec. 36. 32 MRSA §352, sub-§2, as repealed and replaced by PL 1983, c. 841, §9, is amended to read:

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 Professional and Financial Regulation.

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. 37. 32 MRSA §401, 4th ¶, as amended by PL 1979, c. 694, §1, is further amended to read:

No person, firm or corporation ~~shall~~ may operate or cause to be operated a shop where barbering is practiced unless that shop or establishment has been duly licensed. The fee for a license to operate a barber shop and the ~~biennial~~ annual renewal thereof shall be ~~\$40~~ \$25. Shop licenses that require a special inspection, such as new barber shops, change of barber shop location and change of barber shop ownership, shall be ~~\$45~~ \$30 in the first instance including the license, and ~~\$40~~ \$25 for each ~~biennial~~ annual renewal thereof. The license shall run from the first day of January in every ~~other~~ year ~~for 2 years~~ and the fee shall be payable to the board.

Sec. 38. 32 MRSA §407, first ¶, as repealed and replaced by PL 1977, c. 398, §9, is amended to read:

The board shall furnish to each registered barber a certificate of registration ~~bearing the seal of the board and the names of all of its members,~~ certifying that the holder thereof is entitled to practice barbering in this State. It shall be the duty of the

holder of such certificate of registration to post it in a conspicuous place where it may be readily seen by all persons served.

Sec. 39. 32 MRSA §407, 2nd ¶, as amended by PL 1979, c. 694, §4, is further amended to read:

The certificate of registration shall be renewed on or before the first day of January ~~biennially~~ annually, and the holder of the certificate of registration shall pay the sum of ~~\$50~~ \$35 for each ~~biennial~~ annual renewal.

Sec. 40. 32 MRSA §4056, sub-§2, ¶F, as enacted by PL 1983, c. 171, §9, is amended to read:

F. If the commission, after a hearing, finds that a violation of this chapter has occurred, it shall:

(1) Report its findings and recommendations to the Attorney General or district attorney for prosecution;

(2) If it finds that there are mitigating circumstances, reprimand the person;

(3) Assess the violator a ~~fine of no more than \$500 for each violation~~ civil penalty pursuant to Title 10, section 8003, subsection 5;

(4) Except for violations under subsection 5, suspend the violator's license ~~for up to 60 days~~ pursuant to Title 10, section 8003, subsection 5; or

(5) Require the person to comply with such terms and conditions as it determines are necessary to correct or prevent the basis of the violation.

Sec. 41. Transition clause. This Act does not affect in any manner either the identity or term of any member of any board or commission, nor does it affect the validity or term of any certificate or license issued prior to the effective date of this Act.

All existing rules currently in effect and operation in departments and agencies affected by this reorganization shall continue in effect, unless in conflict with this Act, until rescinded or amended. For purposes of the preceding sentence only, "rules"

shall include, but not be limited to, any rule, order, administrative procedure, policy, determination, directive, authorization, permit, license, privilege, requirement, designation, regulation or agreement.

Any occupational board or commission that holds a leasehold interest in real property on the effective date of this Act, unless such property is in Augusta or Hallowell, shall take such steps as may be necessary to terminate the lease and vacate the premises in order to accomplish physical relocation to offices in the Capitol area by January 1, 1990. The commissioner shall have the authority to extend this deadline up to 3 years for any board that can demonstrate to the commissioner's satisfaction that compliance with the 1990 deadline would constitute undue hardship to the board or to its hired personnel.

After the effective date of this Act, no occupational licensing board or commission may enter into or extend any leasehold interest in real property, unless the property is in the Capitol area, without the approval of the commissioner.

The Bureau of Public Improvements is directed to assist any occupational board or commission that makes a request in relocating to the Capitol area.

Sec. 42. Revision clause. Wherever in the Maine Revised Statutes, Title 32, chapters 9, 16, 31, 34-A, 36, 41, 48, 51, 71-A and 103, reference is made to the Commissioner of Human Services or the Department of Human Services or to the Commissioner of Agriculture, Food and Rural Resources or the Department of Agriculture, Food and Rural Resources, those references are amended to refer to the Commissioner of Professional and Financial Regulation or the Department of Professional and Financial Regulation, as applicable.

Sec. 43. Allocation. There is allocated from other special revenue funds for the fiscal year ending June 30, 1987, the following sums:

1986-87

ATTORNEY GENERAL,
DEPARTMENT OF THE

Legal Assistance to	
Other Agencies	
Positions	(7.0)
Personal Services	\$165,000
All Other	15,000

1986-87

Capital Expenditures

5,000

The 7 positions authorized in this allocation for the Department of the Attorney General are 4 attorneys, one legal secretary and 2 professional investigators. These positions will be used by and paid for by the licensing boards and commissions within and affiliated with the Department of Professional and Financial Regulation. The Attorney General's Office shall bill affiliated boards and commissions on an hourly basis for the services of attorneys and investigators used to serve the boards and commissions.

Total

\$185,000

Effective July 16, 1986.

CHAPTER 749

S.P. 957 - L.D. 1921

AN ACT Relating to Staff Retention in
Community-based Residential Facilities
for Persons with Mental Retardation.

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

Sec. 1. 22 MRSA §3186, as enacted by PL 1985, c. 486, §1, is amended by adding at the end a new paragraph to read:

Principles of reimbursement established for intermediate care facilities for the mentally retarded shall assure maximum flexibility enabling facilities to shift variable cost funds within accounts established pursuant to the principles. These principles shall not set any artificial limits on specific variable cost accounts as long as facility totals are met.