

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND FOURTEENTH LEGISLATURE
FIRST REGULAR SESSION

December 7, 1988 to July 1, 1989

Chapters 1 - 502

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PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

of the
ONE HUNDRED AND FOURTEENTH LEGISLATURE

1989

CHAPTER 450

H.P. 225 - L.D. 305

**An Act Amending Various Licensure Laws of
Boards and Commissions within the Department
of Professional and Financial Regulation**

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

Whereas, this Act provides operating funds for the Board of Licensure of Railroad Personnel; and

Whereas, unless this Act is enacted as an emergency that board will be without funds for the first quarter of fiscal year 1989-90; 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Sec. 1. 5 MRSA §12004, sub-§1, ¶A, sub-¶(34-A), as enacted by PL 1987, c. 790, §1, is repealed.

Sec. 2. 5 MRSA §12004-A, sub-§§18, 26 and 38, as enacted by PL 1987, c. 786, §5, are amended to read:

| | | |
|---|---------------------------------|---------------|
| 18. State Board of Funeral Service | \$20/Day \$35/Day | 32 MRSA §1451 |
| 26. Board of Occupa- tional Therapy Practice | Expenses Only \$35/Day | 32 MRSA §2273 |
| 38. State Board of Social Worker Licensure | Expenses Only \$35/Day | 32 MRSA §7026 |

Sec. 3. 5 MRSA §12004-A, sub-§45 is enacted to read:

45. Board of Licensure \$35/Day 32 MRSA §4145
of Railroad Personnel

Sec. 4. 10 MRSA §8001, as repealed and replaced by PL 1987, c. 395, Pt. A, §34 and c. 488, §2, is repealed and the following enacted in its place: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:

1. Bureau of Banking. Banking, Bureau of;

2. Bureau of Consumer Credit Protection. Con-
sumer Credit Protection, Bureau of;

3. Bureau of Insurance. Insurance, Bureau of;

4. Maine Athletic Commission. Athletic Commis-
sion, Maine;

5. Maine State Pilotage Commission. Pilotage
Commission, Maine State;

6. Real Estate Commission. Real Estate Commis-
sion;

7. Arborist Examining Board. Arborist Examining
board;

8. Board of Licensing of Auctioneers. Auctioneers,
Baord of Licensing of;

9. State Board of Barbers. Barbers, State Board of;

10. Board of Commercial Driver Education. Com-
mercial Driver Education, Board of;

11. Board of Registration of Dietetic Practice.
Dietetic Practice, Board of Registration of;

12. Electricians' Examining Board. Electricians'
Examining Board;

13. State Board of Registration for Professional
Foresters. Foresters, State Board of Registration for Pro-
fessional;

14. State Board of Funeral Service. Funeral Service,
State Board of;

15. State Board of Certification for Geologists and
Soil Scientists. Geologists and Soil Scientists, State Board
of Certification for;

16. Board of Hearing Aid Dealers and Fitters.
Hearing Aid Dealers and Fitters, Board of;

17. Manufactured Housing Board. Manufactured
Housing Board;

18. Nursing Home Administrators Licensing
Board. Nursing Home Administrators Licensing Board;

19. Board of Occupational Therapy Practice. Oc-
cupational Therapy Practice, Board of;

20. Oil and Solid Fuel Board. Oil and Solid Fuel
Board;

21. Board of Examiners in Physical Therapy. Physical Therapy, Board of Examiners in;

22. Plumbers' Examining Board. Plumbers' Examining Board;

23. State Board of Examiners of Psychologists. Psychologists, State Board of Examiners of;

24. Radiologic Technology Board of Examiners. Radiologic Technology Board of Examiners;

25. Board of Respiratory Care Practitioners. Respiratory Care Practitioners, Board of;

26. State Board of Social Worker Registration. Social Worker Registration, State Board of;

27. Board of Examiners on Speech Pathology and Audiology. Speech Pathology and Audiology, Board of Examiners on;

28. Board of Registration of Substance Abuse Counselors. Substance Abuse Counselors, Board of Registration of;

29. State Board of Veterinary Medicine. Veterinary Medicine, State Board of;

30. Acupuncture Licensing Board. Acupuncture Licensing Board;

31. Maine State Pharmacy Commission. Pharmacy Commission, Maine State;

32. State Board of Licensure for Professional Surveyors. Licensure for Professional Surveyors, State Board of;

33. Board of Chiropractic Examination and Registration. Chiropractic Examination and Registration, Board of; and

34. Board of Licensure of Railroad Personnel. Licensure of Railroad Personnel, Board of.

Sec. 5. 10 MRSA §8001-A is enacted to read:

§8001-A. Department; affiliation

The following boards and commissions are affiliated with the Department of Professional and Financial Regulation:

1. State Board of Registration of Architects and Landscape Architects. Architects and Landscape Architects, State Board of Registration of;

2. State Board of Cosmetology. Cosmetology, State Board of;

3. Board of Dental Examiners. Dental Examiners, Board of;

4. Board of Registration in Medicine. Medicine, Board of Registration in;

5. State Board of Nursing. Nursing, State Board of;

6. Board of Optometric Examiners. Optometric Examiners, Board of;

7. Board of Osteopathic Examination and Registration. Osteopathic Examination and Registration, Board of;

8. Board of Examiners of Podiatrists. Podiatrists, Board of Examiners of; and

9. Board of Registration for Professional Engineers. Professional Engineers, Board of Registration for.

Sec. 6. 10 MRSA §8003, sub-§5, as amended by PL 1987, c. 595, §2, is further 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 or affiliated with 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 or affiliated with the department may: take one or more of the following actions.

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

A-1. For each violation of applicable laws, rules or conditions of licensure or registration, the bureau, board or commission may take one or more of the following actions:

(1) Issue warnings, censures or reprimands to a licensee or registrant. Each warning, censure and reprimand issued shall be based upon violations of different applicable laws, rules or conditions of licensure or shall be based upon separate instances of actionable conduct or activity;

(2) Suspend a license or registration for up to 90 days for each violation of applicable laws, rules and conditions of licensure or registration or for instance of actionable conduct or activity. Suspensions may be set to run concurrently or consecutively and, in total, may not exceed one year. Execution of all or any portion of a term of suspension may be stayed pending successful completion of

conditions of probation, although the suspension shall remain part of the licensee's or registrant's record;

(3) Impose civil penalties of up to \$1,500 for each violation of applicable laws, rules and conditions of licensure or registration or for instances of actionable conduct or activity; and

(4) Impose conditions of probation upon an applicant, licensee or registrant. Probation may run for such time period as the bureau, board or commission deems appropriate. Probation may include such conditions as: additional continuing education; medical, psychiatric or mental health consultations or evaluations; mandatory professional or occupational supervision of the applicant, licensee or registrant; and such other conditions as the bureau, board or commission deems appropriate. Costs incurred in the performance of terms of probation shall be borne by the applicant, licensee or registrant. Failure to comply with the conditions of probation shall be a ground for disciplinary action against a licensee or registrant.

B. Execute The bureau, board or commission may execute a consent agreement, with the consent of all parties and the counsel to the licensing board or commission, to resolve any which resolves a complaint or investigation without further proceedings. Consent agreements may be entered into only with the consent of: the applicant, licensee or registrant; the bureau, board or commission; and the Department of the Attorney General. Any remedy, penalty or fine that is otherwise available by law, even if only in the jurisdiction of the Administrative Court, may be achieved by consent agreement, including temporary or long-term suspension and permanent surrender of an revocation of a professional or occupational license or registration. A consent agreement is not subject to review or appeal, and may be modified only by a writing executed by all parties to the original consent agreement. A consent agreement is enforceable by an action in Superior Court.

C. The bureau, board or commission may:

(1) Require all applicants for license or registration renewal to have responded under oath to all inquiries set forth on renewal forms; or

(2) Require applicants for license or registration renewal to present proof of satisfactory completion of continuing professional or occupational education in accordance with each bureau's, board's or commission's rules. Failure to comply with the continuing education rules may, in the bureau's, board's or commission's discretion, result in a decision

to deny license or registration renewal or may result in a decision to enter into a consent agreement and probation setting forth terms and conditions to correct the licensee's or registrant's failure to complete continuing education. Terms and conditions of a consent agreement may include requiring completion of increased hours of continuing education, civil penalties, suspension and such other terms as the bureau, board, commission, the licensee or registrant and the Department of the Attorney General deem appropriate.

D. The bureau, board or commission may require surrender of licenses and registrations. In order for a licensee's or registrant's surrender of a license or registration to be effective, a surrender must first be accepted by vote of the bureau, board or commission. Bureaus, boards and commissions may refuse to accept surrender of licenses and registrations if the licensee or registrant is under investigation or is the subject of a pending complaint or proceeding, unless a consent agreement is first entered into pursuant to this chapter.

The jurisdiction to suspend occupational and professional 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. 7. 32 MRSA §280, sub-§3, as amended by PL 1981, c. 501, §52, is repealed and the following enacted in its place:

3. Real estate brokerage. If an auctioneer engages in real estate brokerage, the auctioneer must be licensed under chapter 114, except that a license is not required if the auctioneer is hired to call bids on real estate being sold at an auction and the auctioneer does not prepare contracts or otherwise control the actual sale or take custody of any part of the purchase price.

Sec. 8. 32 MRSA §451, sub-§§4 and 5 are enacted to read:

4. Commissioner. "Commissioner" means the Commissioner of Professional and Financial Regulation.

5. Department. "Department" means the Department of Professional and Financial Regulation.

Sec. 9. 32 MRSA §506, as amended by PL 1985, c. 748, §42, is further amended to read:

§506. Budget

The board shall submit to the Commissioner of Professional and Financial Regulation its budgetary requirements in the same manner as is provided in Title 5, section 1665, and the commissioner shall in turn transmit these requirements to the Bureau of the Budget without any revision, alteration or change.

With the advice of the board, the commissioner may appoint, subject to the Civil Service Law, such employees as may be necessary to carry out this chapter. Any person so employed shall be located in the department and under the administrative and supervisory direction of the commissioner.

All licenses shall expire on June 1st annually or at such other time as the commissioner designates.

Sec. 10. 32 MRSA §1101, sub-§1, as amended by PL 1981, c. 577, §5, is further amended to read:

1. Apprentice electrician. "Apprentice electrician" ~~shall mean~~ means a person who is as defined in Title 26, chapter 11 and who is engaged in such a written agreement to work at and learn the trade of an electrician under the direct supervision of a master ~~or~~, journeyman or limited electrician. The biennial renewal fee for an apprentice electrician license shall be \$20.

Sec. 11. 32 MRSA §1101, sub-§3, as amended by PL 1981, c. 577, §6, is further amended to read:

3. Helper electrician. "Helper electrician" ~~shall mean~~ means a person who is engaged in assisting in making electrical installations under the direct supervision of a master ~~or~~, journeyman or limited electrician but does not qualify under subsection 1. The biennial renewal fee for a helper electrician license shall be \$20.

Sec. 12. 32 MRSA §1400, sub-§2-A, as enacted by PL 1981, c. 703, Pt. A, §44, is amended to read:

2-A. Commissioner. "Commissioner" means the Commissioner of ~~Business~~ Professional and Financial Regulation.

Sec. 13. 32 MRSA §1401, 3rd ¶, as amended by PL 1985, c. 240, is further amended to read:

The funds may be withdrawn, if otherwise lawful and permitted by contract, by the payee on written instructions of the payor or ~~his~~ the payor's legal representative or on the death of the person for whose benefit the funds were paid, in which latter event they shall be used in accordance with the agreement. The board may adopt rules regarding the form of the trust agreement.

Sec. 14. 32 MRSA §1403, as repealed and replaced by PL 1983, c. 413, §56, is amended to read:

§1403. Employment of funeral directors, embalmers or practitioners of funeral services by cemeteries prohibited

No funeral home, funeral establishment or person holding a license under this chapter ~~shall~~ may be employed as a funeral home, funeral establishment, or as an embalmer or funeral director or practitioner of funeral services by a cemetery, cemetery association or cemetery corporation, nor shall such person be so employed by a funeral home, funeral establishment or mortuary establishment which owns or controls or is owned or controlled by a cemetery, cemetery association or cemetery corporation. Control shall not be considered to exist because the owners, officers or employees of a funeral home, funeral establishment or mortuary establishment serve without pay or for a fee not exceeding \$500 per year per person as officers or as the minority of the directors or trustees of a cemetery association or cemetery corporation in which they have no financial investment. This section ~~shall~~ does not prevent employment of persons licensed under this chapter by cemeteries, cemetery associations or cemetery corporations in other capacities than that of funeral director or embalmer or practitioner of funeral services. This section ~~shall~~ does not apply to disinterments or transfers of disinterred bodies.

Any person who violates this section is guilty of a Class E crime.

Sec. 15. 32 MRSA §1451, first ¶, as amended by PL 1983, c. 812, §206, is further amended to read:

The State Board of Funeral Service, as established by Title 5, section ~~4204~~ 12004-A, subsection ~~4~~ 18, and in this chapter called the "board," shall consist of ~~7~~ 8 members, 6 of whom shall be persons licensed for the practice of funeral service for 10 consecutive years or who have had 10 consecutive years' experience ~~as an embalmer or as a practitioner of funeral director service~~ in this State immediately preceding their appointment and ~~one~~ 2 of whom shall be a representative representatives of the public. Members shall be appointed by the Governor for a term of 4 years, except that no more than 2 members' terms may expire in any one calendar year and appointments for terms of less than 4 years may be made in order to comply with this limitation. Upon expiration of a member's term, ~~he~~ that member shall serve until ~~his~~ a successor is qualified and appointed. The successor's term shall be 4 years from the date of the expiration, regardless of the date of ~~his~~ the successor's appointment. Any vacancy in the board shall be filled by appointment of a person, qualified as was the board member being replaced, to hold office during the unexpired term. No person may be eligible to serve more than 2 full consecutive terms, provided that for this purpose only a period actually served which exceeds 1/2 of the 4-year term shall be deemed a full term. A board member may be removed by the Governor for cause.

Sec. 16. 32 MRSA §1451, 2nd ¶, as repealed and replaced by PL 1983, c. 413, §57, is amended to read:

The board may adopt rules consistent with law governing the care, preparation, transportation, cremation,

burial or disposition of dead human bodies, and governing funeral service, including licensing ~~and~~ or registration, or both, of resident practitioner trainees, practitioners of funeral service, funeral directors, embalmers, funeral attendants, funeral home establishments and branches. These rules shall not become effective, unless adopted in conformity with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter II.

Sec. 17. 32 MRSA §1454, as amended by PL 1983, c. 553, §32, is repealed.

Sec. 18. 32 MRSA §1455-A, 2nd ¶, as enacted by PL 1983, c. 413, §60, is amended to read:

The board may refuse to issue or to renew any license ~~and, may suspend any license for up to 90 days and may assess a \$1,500 fine for each violation of this chapter.~~ The Administrative Court may revoke, suspend or refuse to renew a license issued under this chapter for any of the following reasons:

Sec. 19. 32 MRSA §1455-A, sub-§2, ¶¶E and K, as enacted by PL 1983, c. 413, §60, are amended to read:

E. Employment, directly or indirectly, of a resident practitioner trainee, agent, assistant, embalmer, employee or other person, on part or full time, or on commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral establishment;

K. Gross incompetency, negligence or misconduct in carrying on the business or profession of funeral service; ~~or~~

Sec. 20. 32 MRSA §1455-A, sub-§2, ¶M is enacted to read:

M. Any violation of this chapter or any rule of the board; or

Sec. 21. 32 MRSA §1455-A, last ¶, as enacted by PL 1983, c. 413, §60, is amended to read:

Whoever violates any provision of this chapter or any rule prescribed by the board for the preparation, embalming, transportation or burial of any dead human body is guilty of a Class E crime. ~~The county attorney of the county in which that violation occurs shall prosecute all those persons.~~ The District Court shall have original and concurrent jurisdiction with the Superior Court in all prosecutions under this chapter. 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. 22. 32 MRSA §1501, as amended by PL 1983, c. 816, Pt. A, §32, is further amended to read:

§1501. Licenses; qualifications; requirements

The State Board of Funeral Service may determine the qualifications necessary to enable any person to lawfully engage in the funeral service profession and operate a funeral establishment. The board shall examine all applicants for licenses for the practice of funeral service and shall issue a license to all persons who successfully pass that examination. To be licensed for the practice of funeral service under this chapter, a person must be at least 18 years of age, a resident of this State, have successfully completed a prescribed course at a school or schools approved by the State Board of Funeral Service and must have served as a practitioner trainee for not less than 12 months under the personal supervision of a person licensed for the practice of funeral service and approved by the board. Each applicant shall demonstrate ~~that he is trustworthy~~ trustworthiness and ~~competent~~ competency to engage in the profession of funeral service in such a manner as to safeguard the interests of the public.

~~Each such applicant for the license for the practice of funeral service shall be examined on the following subjects: Basic and health sciences including anatomy, chemistry, bacteriology, pathology, hygiene, public health, funeral service arts and sciences including embalming and restorative art, funeral service administration including accounting, funeral law, psychology, funeral principles, directing and management.~~

Each applicant for license or registration as a practitioner of funeral service, funeral director or embalmer shall be examined on the courses as outlined in the board's rules.

~~All funeral establishments must be operated by a person or persons holding a funeral director's license, or a person who holds a license for the profession of funeral service, and said license shall be conspicuously displayed at or in such establishments.~~

~~All branch establishments must be operated by a person or persons holding a funeral director's license or a license for the profession of funeral service, and the license or a copy thereof must be displayed in all such branch establishments.~~

All funeral establishments and branches must be operated by a person or persons holding a funeral director's license, which was initially issued before January 1, 1989, or a practitioner of funeral service license. That license must be displayed at or in any such establishment or branch.

A funeral establishment, in which the preparation of dead bodies takes place, must contain a preparation room equipped with tile, cement or composition floor, necessary drainage or proper disposal of waste satisfactory to the local health officer, and ventilation; and containing necessary instruments and supplies for the preparation and embalming of dead human bodies for burial, transportation or other disposition.

The board may adopt such rules, ~~regulations~~ and classifications as may be reasonable, sufficient and proper to

define what shall be deemed the proper drainage and ventilation and what instruments are necessary and suitable in a funeral establishment.

The board may adopt rules ~~and regulations~~ governing its own procedure. It may adopt rules ~~and regulations~~ consistent with the law governing the time, place, method and grading of examinations. Written examinations shall be retained for a period of 5 years, but need not be retained for a longer period. The board may waive all or part of the licensing requirements and qualifications of this chapter if in its judgment these requirements and qualifications are in conflict with the religious faith of an applicant.

Sec. 23. 32 MRSA §1503-A, as amended by PL 1983, c. 468, §7, is further amended to read:

§1503-A. Practitioner trainee

In order for any person to receive credit for time served as a practitioner trainee, ~~he that person shall serve in full-time employment~~ have served 2,000 hours of employment with a funeral establishment approved by the State Board of Funeral Service under the instruction and supervision of a person licensed for the practice of funeral service and actively engaged in ~~the that practice thereof. He,~~ and must register as a practitioner trainee with the board on a form supplied by the board. Upon ~~his~~ terminating ~~his~~ employment, ~~he the practitioner trainee~~ shall notify the board immediately, giving the date of ~~such~~ termination. The practitioner trainee must repeat this procedure with all subsequent employers accurately showing the dates of beginning and of terminating apprenticeship employment. Before a funeral service license will be issued, the practitioner trainee must file with the board a certification of ~~his the~~ trainee time served, signed by ~~his the practitioner trainee's~~ employer or employers, before a notary public. Practitioner trainee requirements shall be satisfied in the case of an applicant who presents proof ~~that he or she is presently licensed of present licensure~~ in another state at the time ~~he or she makes application is made~~ for ~~such~~ license in this State.

Sec. 24. 32 MRSA §1504, as amended by PL 1983, c. 816, Pt. A, §33, is repealed and the following enacted in its place:

§1504. Fees; expiration and renewal of licenses

An application fee and an examination fee may be established by the board in amounts which are reasonable and necessary for their respective purposes.

1. Maximum fees. All licenses and certificates of registration which are issued by the board shall expire on December 31st annually or such other time as the Commissioner of Professional and Financial Regulation may designate. Any person holding a license or registration under this law may have the license renewed by making and filing an application with the board, within 30 days preceding the expiration of that license or certificate of registration, upon blanks prescribed by the board and upon payment of the established renewal fee. The board shall establish by rule the

initial and renewal fees for licensure and registration for an embalmer's license, funeral home and branch registration, practitioner of funeral service license and practitioner trainee license. The initial and renewal license and registration fees shall not exceed the following amounts:

- A. An embalmer's license, \$80;
- B. A funeral director's license, \$80;
- C. A funeral attendant's registration, \$80;
- D. A funeral home and branch registration, \$80;
- E. A practitioner of funeral service license, \$100; and
- F. A practitioner trainee license, \$20.

2. Late renewal. A license may be renewed up to 90 days after the date of its expiration upon payment of a late fee of \$10 in addition to the renewal fee. Any person who submits an application for renewal more than 90 days after the license expiration date is subject to all requirements governing new applicants under this chapter, except that the board may in its discretion, giving due consideration to the protection of the public, waive examination if the renewal application is made within 2 years from the date of the expiration.

Sec. 25. 32 MRSA §1601, sub-§4, as amended by PL 1983, c. 812, §208, is further amended to read:

4. Compensation. The members of the board shall be compensated according to the provisions of Title 5, chapter 379 ~~for no more than 18 meetings per calendar year, or, in the case of the chairman, for no more than 25 days per calendar year. Expenses as related to duties out of the State shall be reimbursable for no more than 5 calendar days per calendar year unless approved in advance by the Governor.~~

Sec. 26. 32 MRSA §1657, first ¶, as amended by PL 1987, c. 677, §5, is further amended to read:

The board shall furnish to each licensed cosmetologist, aesthetician or manicurist a license ~~bearing the seal of the board~~ certifying that the holder of that license is entitled to practice in this State. It shall be the duty of the holder of ~~such that~~ license to post it in a conspicuous place where it may be readily seen by all persons served.

Sec. 27. 32 MRSA §4150, sub-§3, as enacted by PL 1987, c. 790, §2, is amended to read:

3. Deposit of fees. All fees received by the board shall be paid to the Treasurer of State ~~and deposited into the General Fund~~ to be used for carrying out this chapter. Any balance of 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. 28. 32 MRSA §4853, sub-§4, as enacted by PL 1975, c. 477, §4, is amended to read:

4. Commissioner. "Commissioner" means the Commissioner of ~~Agriculture or his duly authorized agent~~ Professional and Financial Regulation.

Sec. 29. 32 MRSA §4854, as amended by PL 1985, c. 748, §42, is further amended to read:

§4854. State Board of Veterinary Medicine

The State Board of Veterinary Medicine, as established by Title 5, section ~~42004~~ 12004-A, subsection ~~4~~ 42, within the Department of Professional and Financial Regulation, shall consist of 6 members, appointed by the ~~Commissioner of Professional and Financial Regulation~~ Governor, 5 of whom shall be licensed Maine veterinarians who are residents of this State, graduates of a veterinary school and who have been licensed to practice veterinary medicine in Maine for the 5 years preceding their appointment and one member who shall be a representative of the public. At least 30 days before the appointment of any licensed Maine veterinarian to the board, the State Veterinary Medical Association shall forward to the ~~commissioner~~ Governor for his consideration the names of 3 or more qualified veterinarians. The term of office of each present member of the board shall expire as now provided. One new member to be appointed to the board shall serve a 3-year term. One new member to be appointed to the board shall serve a 4-year term. The public member to be appointed to the board shall serve a 5-year term. Thereafter, all members shall be appointed for 5-year terms. No person shall may serve 2 consecutive 5-year terms, but a person appointed for a term of less than 5 years may ~~succeed himself~~ serve a consecutive term. No person may serve on the board who is, or has been during the 2 years preceding his that appointment, a trustee or a member of the faculty or advisory board of a veterinary school.

Sec. 30. 32 MRSA §4857, as enacted by PL 1975, c. 477, §4, is amended to read:

§4857. Removal

Members of the board may be removed by the ~~commissioner~~ Governor for cause, after notice and hearing.

Sec. 31. 32 MRSA §4863, first ¶, as amended by PL 1983, c. 48, §6, is further amended to read:

All licenses shall expire annually on December 31st, or other such date as the commissioner may designate, and shall be renewed by registration with the board and payment of a renewal fee established by the board. On or before December 1st of each year, the secretary shall mail a notice to each licensed veterinarian that ~~his~~ the license will expire on December 31st and provide ~~him with~~ a form for reregistration. The secretary shall issue a renewal certificate to all persons registering under this chapter.

Sec. 32. 32 MRSA §5011-B, as amended by PL 1979, c. 285, §3, is further amended to read:

§5011-B. Budget

The board shall submit to the Commissioner of ~~Business~~ Professional and Financial Regulation its budgetary requirements in the same manner as is provided in Title 5, section 1665, and the commissioner shall in turn transmit these requirements to the Bureau of the Budget.

Sec. 33. 32 MRSA §5011-C, as amended by PL 1985, c. 785, Pt. B, §144, is further amended to read:

§5011-C. Employees

The Commissioner of ~~Business, Occupational and Professional and Financial Regulation~~ Professional and Financial Regulation, with the advice ~~and consent~~ of the board, shall be empowered to appoint, subject to the Civil Service Law, such employees as may be necessary to carry out this chapter. Any person so employed shall be located in the Department of ~~Business, Occupational and Professional and Financial Regulation~~ Professional and Financial Regulation and under the administrative and supervisory direction of the ~~Commissioner of Business, Occupational and Professional Regulation~~ commissioner.

Sec. 34. 32 MRSA §5015, as amended by PL 1987, c. 395, Pt. A, §187, is further amended by adding at the end a new paragraph to read:

The board may require applicants for license renewal to present evidence of satisfactory completion of continuing professional education in accordance with the board's rules.

Sec. 35. 32 MRSA §9702, sub-§§2 and 3, as enacted by PL 1985, c. 288, §3, are amended to read:

2. Commissioner. "Commissioner" means the Commissioner of ~~Business, Occupational and Professional and Financial Regulation~~ Professional and Financial Regulation.

3. Department. "Department" means the Department of ~~Business, Occupational and Professional and Financial Regulation~~ Professional and Financial Regulation.

Sec. 36. 32 MRSA §9702, sub-§5, ¶E, as enacted by PL 1985, c. 288, §3, is amended to read:

E. Diagnostic and therapeutic use of the following:

- (1) Administration of medical gases, aerosols and humidification;
- (2) Environmental control mechanisms and ~~baromedical~~ hyperbaric therapy;
- (3) Pharmacological agents related to respiratory care procedures;
- (4) Mechanical or physiological ventilatory support;
- (5) Bronchopulmonary hygiene;
- (6) Cardiopulmonary resuscitation;

- (7) Maintenance of natural airways;
- (8) Insertion and maintenance of artificial airways;
- (9) Specific diagnostic and testing techniques employed in the medical management of patients to assist in diagnosis, monitoring, treatment and research of pulmonary abnormalities, including measurement of ventilatory volumes, pressures and flows, collection of specimens of blood and collection of specimens from the respiratory tract;
- (10) Analysis of blood gases and respiratory secretions and pulmonary function testing; and
- (11) Hemodynamic and physiologic measurement and monitoring of cardiac functions as it relates to cardiopulmonary pathophysiology.

Sec. 37. 32 MRSA §9702, sub-§7 is enacted to read:

7. Respiratory care practitioner trainee. "Respiratory care practitioner trainee" means an employee of a health care facility who is enrolled in the clinical portion of an approved respiratory care educational program.

Sec. 38. 32 MRSA §9703, sub-§1, as enacted by PL 1985, c. 288, §3, is amended to read:

1. Establishment and membership. There is established within the Department of ~~Business, Occupational and Professional and Financial~~ Regulation, in accordance with Title 5, section ~~42004~~ 12004-A, subsection 4 35, a Board of Respiratory Care Practitioners. The board shall consist of 5 members appointed by the Governor as follows:

- A. Three respiratory care practitioners who have been engaged in the practice of respiratory care for at least 2 years immediately preceding their appointments and who shall be at all times holders of valid licenses for the practice of respiratory care in the State, except for the members of the first board, each of whom shall fulfill the requirements for licensure of this chapter; and
- B. Two public members who are residents of the State, who do not hold a license to practice respiratory care, and who have no direct or indirect financial interest in the practice or delivery of respiratory care.

Sec. 39. 32 MRSA §9704, sub-§2, as enacted by PL 1985, c. 288, §3, is amended to read:

2. Rules. The board may, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, adopt rules to carry out the policy of this chapter, including, but not limited to, rules relating to professional licensure,

professional conduct, continuing education, approval of continuing education programs and to the establishment of ethical standards of practice for persons holding a license to practice respiratory care in this State.

Sec. 40. 32 MRSA §9706, as enacted by PL 1985, c. 288, §3, is repealed.

Sec. 41. 32 MRSA §9706-A is enacted to read:

§9706-A. Persons and practices exempt

Nothing in this chapter may be construed as preventing or restricting the practice, services or activities of:

1. Licensed persons. Any medical personnel licensed or registered in this State from engaging in the delivery of respiratory care services for which they have been formally trained;

2. Students. The delivery of respiratory care services by students as an integral part of the study program of students enrolled in education programs of any health care profession, as determined by board rule;

3. Associates. Any person performing respiratory care services in the State, provided that these services are performed for no more than 30 days in a calendar year and are rendered in association with a respiratory care practitioner licensed under this chapter, if:

A. The associate is licensed under the law of another state which has licensure requirements equivalent to the requirements of this chapter; or

B. The associate is certified as a respiratory therapy technician or registered as a respiratory therapist by the National Board of Respiratory Care and resides in a nonlicensure state;

4. Gratuitous care. Family members, friends and others who give gratuitous care to a patient and do not hold themselves out as respiratory care practitioners;

5. Self-care. Persons who administer respiratory care to themselves;

6. Cardiovascular testing. Cardiovascular testing by individuals who have been issued credentials by the National Society of Cardiopulmonary Technicians, the American Cardiology Technologists Association or working in hospital-based cardiology departments;

7. Cardiopulmonary testing. Cardiopulmonary testing by individuals who have been issued credentials by the National Board for Respiratory Care as Certified Pulmonary Function Technologists; or

8. Physician supervision. The delivery of respiratory care services by individuals employed in the office and under the direct supervision and control of a physician licensed to practice by the State.

Sec. 42. 32 MRSA §9707, as enacted by PL 1985, c. 288, §3, is amended to read:

§9707. Temporary license

A No more than one temporary license may be granted to a person who has completed the education educational requirements of this chapter. This license allows the holder to practice respiratory care under the direct supervision of a licensed respiratory care practitioner. This license shall be issued for a term of one year and may ~~not be renewed~~ extended for not more than an additional one-year period at the discretion of the board.

Sec. 43. 32 MRSA §9707-A is enacted to read:

§9707-A. Respiratory care practitioner trainee registration

The board may register student employees as respiratory care practitioner trainees as defined under section 9702, subsection 7, and promulgate rules for that registration.

Sec. 44. 32 MRSA §9708, sub-§1, as enacted by PL 1985, c. 288, §3, is repealed.

Sec. 45. 32 MRSA §9708, sub-§4 is enacted to read:

4. Restrictions. A respiratory care practitioner trainee shall not perform invasive procedures or procedures related to critical respiratory care, including therapeutic, diagnostic and palliative procedures. Respiratory care practitioner trainees shall only perform services under the on-site supervision of a licensed respiratory care practitioner.

Sec. 46. 32 MRSA §9710, sub-§1, 1B, as enacted by PL 1985, c. 288, §3, is amended to read:

B. For a renewal respiratory care practitioner's license, ~~\$40~~ \$80 biennially; and

Sec. 47. 32 MRSA §9712, sub-§1, as enacted by PL 1985, c. 288, §3, is amended to read:

1. Biennial renewal. Licenses shall expire ~~annually biennially on December 31st~~ April 30th or on such other date as the commissioner determines. Notice of expiration shall be mailed to each licensee's last known address at least 30 days in advance of the expiration of ~~his~~ the license. The notice shall include any requests for information necessary for renewal.

Licenses may be renewed up to 90 days after the date of expiration upon payment of a late fee of \$10 in addition to the renewal fee. Any person who submits an application for renewal more than 90 days after the license renewal date shall be subject to all requirements governing new applicants under this chapter, except that the board may, giving due consideration to the protection of the public, waive examination if that renewal application is made within 2 years from the date of that expiration.

Sec. 48. 32 MRSA §9712, sub-§3 is enacted to read:

3. Transition. Implementation of biennial license renewal shall occur during the 1990 renewal period.

Sec. 49. 32 MRSA §12228, sub-§1, as enacted by PL 1987, c. 489, §2, is amended to read:

1. Certificate grant. The board shall grant the certificate of "certified public accountant" to any person who makes application to the board and who meets the good character, education, examination and experience requirements of, and who pays the fees prescribed by, this section, except that no certificate may be granted to a person who has been issued a certificate by another state.

Sec. 50. 32 MRSA §12240, sub-§1, as enacted by PL 1987, c. 489, §2, is amended to read:

1. Certificate grants. The board shall grant the certificate of "public accountant" to any person who makes application to the board and who meets the good character, education, examination and experience requirements of, and who pays the fees prescribed by, subsections 2 to 8, except that no certificate may be granted to a person who has been issued a certificate by another state.

Sec. 51. Allocation. The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

| | 1989-90 | 1990-91 |
|---|-----------------|-----------------|
| PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF | | |
| Board of Licensure of Railroad Personnel | | |
| Positions | (1) | (1) |
| Personal Services | \$27,300 | \$28,800 |
| All Other | 10,000 | 12,000 |
| TOTAL | <u>\$37,300</u> | <u>\$40,800</u> |
| State Board of Social Worker Licensure | | |
| Personal Services | \$3,000 | \$3,000 |
| Board of Occupational Therapy Practice | | |
| Personal Services | \$3,000 | \$3,000 |
| Board of Chiropractic Examination and Registration | | |
| Positions | (1) | (1) |
| Personal Services | \$23,500 | \$23,500 |

**State Board of Licensure
for Professional Surveyors**

Personal Services \$3,000 \$3,000

**State Board of Funeral
Service**

Personal Services \$900 \$900

**DEPARTMENT OF PROFESSIONAL
AND FINANCIAL REGULATION**

TOTAL \$70,700 \$74,200

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

Effective June 23, 1989.

CHAPTER 451

H.P. 966 - L.D. 1344

**An Act to Strengthen Maine's
Restaurant Smoking Law**

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

Sec. 1. 22 MRSA §1579-A, sub-§§2 and 3, as enacted by PL 1987, c. 191, are amended to read:

2. Restaurants. Smoking in restaurants shall be governed by the following policies.

A. Restaurants shall provide for their patrons a ~~no smoking~~ no-smoking area reasonably calculated to address the needs of the nonsmoking public. The department shall, by rule, adopted under the Maine Administrative Procedure Act, Title 5, chapter 375, define "reasonably calculated." The rule, accompanied by a description of the department's experience in enforcing the rule, shall be submitted to the joint standing committee of the Legislature having jurisdiction over human resource matters by January 1, 1991, for review.

B. Restaurants shall display prominently, at or near the entrance, a sign indicating ~~its~~ their policy on seating smokers and nonsmokers and shall encourage ~~patrons~~ customers to make their seating requests known. A sign need not be displayed if a host or hostess seats ~~patrons~~ customers and indicates verbally at the time of seating the restaurant's policy and the location of the smoking and no-smoking areas in the restaurant.

C. Nothing in this subsection prohibits a restaurant from designating more than 50% of its indoor seating or all of its indoor seating as a no-smoking area.

3. Violations. Failure to post a sign or announce a policy, to provide a no-smoking area as required by subsection 2 or to establish, post or be responsible for implementation of a policy, comply with rules promulgated pursuant to subsection 2 is a civil violation for which a forfeiture of not more less than \$100 nor more than \$500 may be adjudged.

Sec. 2. 22 MRSA §1579-A, sub-§4 is enacted to read:

4. Licensure requirement. The Department of Human Services shall implement rules, pursuant to section 2496, that make the failure to provide for a no-smoking area under the provisions of subsection 2 a violation of the eating establishment licensure rules. Employees of the department inspecting restaurants pursuant to their authority under chapter 562 shall determine whether the restaurant is in compliance with and enforce this section.

See title page for effective date.

CHAPTER 452

H.P. 446 - L.D. 611

**An Act to Clarify Procedural Aspects of
the Forcible Entry and Detainer Law**

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

Sec. 1. 14 MRSA §6003, 2nd ¶, as enacted by PL 1981, c. 428, §5, is amended to read:

If either party in a forcible entry and detainer action requests a recorded hearing, the court shall schedule ~~it~~ and hold the hearing as soon as practicable, but no later than ~~7~~ 10 days after the return day. Any defendant requesting a recorded hearing shall ~~be prepared to~~ file a written answer enumerating all known defenses on or before the return day.

Sec. 2. 14 MRSA §6005, as amended by PL 1981, c. 428, §6, is further amended by adding after the first paragraph a new paragraph to read:

An additional writ of possession may be issued by the clerk at the request of the plaintiff after issuance of the first writ.

See title page for effective date.

CHAPTER 453

H.P. 1167 - L.D. 1621

**An Act to Ensure Notification and Participation by
the Public in Licensing and Relicensing of Hydro-
electric Dams and to Further Ensure the Equal
Consideration of Fisheries and Recreational Uses
in Licensing and Relicensing**