

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

FIRST REGULAR SESSION

December 5, 1990 to July 10, 1991

Chapters 1 - 590

THE GENERAL EFFECTIVE DATE FOR
NON-EMERGENCY LAWS IS
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J.S. McCarthy Company
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1991

PUBLIC LAWS
OF THE
STATE OF MAINE

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1991

B. Have been provided to a state agency by an authorized independent vendor or contractor under an agreement by which:

(1) All trade secrets that can be protected are identified without disclosing the secret;

(2) The vendor or contractor retains all intellectual property rights in those trade secrets; and

(3) The state agency agrees to hold and use the programs, data, diagrams or source code without disclosing any identified trade secrets.

See title page for effective date.

CHAPTER 341

H.P. 966 - L.D. 1393

An Act Increasing the Membership of the Nursing Home Administrators Licensing Board and Clarifying the Penalty for Unlicensed Practice

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

Sec. 1. 32 MRSA §61, as amended by PL 1985, c. 233, §3, is further amended to read:

§61. Requirement for license

No medical care facility other than a hospital may operate except under the supervision of a licensed administrator and no person may be an administrator of a medical care facility other than a hospital unless he that person is the holder of a current administrator's license or a temporary permit issued pursuant to this chapter.

Sec. 2. 32 MRSA §62, sub-§1, as enacted by PL 1969, c. 350, is amended to read:

1. Administrator. "Administrator" means an individual who is charged with and has responsibility for the general administration of a facility other than a hospital whether or not such individual has an ownership interest in such home and whether or not his that individual's functions and duties are shared with one or more other individuals.

Sec. 3. 32 MRSA §63-A, as amended by PL 1989, c. 503, Pt. B, §119, is further amended to read:

§63-A. Board established; membership and organization

1. Membership. The Nursing Home Administrators Licensing Board, as established by Title 5, section 12004-A, subsection 23, shall consist consists of 7 8 members

appointed by the Governor. The members ~~shall~~ must be citizens of the United States and residents of this State. One member ~~shall~~ must be a hospital administrator with not less than 5 years of active practice in the State as a hospital administrator. One member ~~shall~~ must be a registered nurse with not less than 5 years of active practice in nursing homes in the State. Two members ~~shall~~ must be representatives of the public. Three members ~~shall~~ must be administrators of nursing homes with not less than 5 years of active experience in the State. One member must be an administrator of an intermediate care facility for the mentally retarded with not less than 5 years of active practice in that capacity.

2. Terms. Appointments ~~shall be~~ are for 3-year terms, except that the terms of no more than 3 members ~~shall~~ may expire in any calendar year and appointments for terms of less than 3 years may be made in order to comply with this limitation. No person may be eligible to serve more than 3 consecutive full terms, provided that for this purpose only a period actually served which exceeds 1/2 of the 3-year term ~~shall be deemed is~~ considered a full term. Upon expiration of a member's term, ~~he that member~~ shall serve until ~~his~~ a successor is appointed and qualified. The successor's term ~~shall be~~ is for 3 years from the date of expiration, regardless of the date of appointment. Any vacancy occurring prior to the expiration of the specified term ~~shall~~ must be filled by appointment for the unexpired term. A member may be removed by the Governor for cause.

3. Meetings; chair; quorum. The board shall meet at least once a year to conduct its business and to elect a ~~chairman~~ chair. Additional meetings ~~shall~~ must be held as necessary to conduct the business of the board, and may be convened at the call of the ~~chairman~~ chair or of a majority of the board members. ~~Four~~ Five members of the board ~~shall~~ constitute a quorum for all purposes.

4. Compensation. Members of the board ~~shall be~~ are compensated according to the provisions of Title 5, chapter 379.

5. Employees. 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~~ must be located in the department and under the administrative and supervisory direction of the commissioner.

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

7. Reports; budget. Not later than August 1st of each year, the board shall submit to the commissioner a report of its transactions of the preceding fiscal year ending

June 30th, and shall transmit to ~~him~~ the commissioner a complete statement of all receipts and expenditures of the board, attested by affidavit of its ~~chairman~~ chair. The board shall submit to the commissioner its budgetary requirements in the same manner as ~~is~~ provided in Title 5, section 1665.

Sec. 4. 32 MRSA §63-B, sub-§6, as enacted by PL 1985, c. 233, §6, is amended to read:

6. Hearings. Hearings may be conducted by the board to assist with investigations, to determine whether grounds exist for suspension, revocation or denial of a license, or as otherwise ~~deemed~~ determined necessary to the fulfillment of its responsibilities under this chapter. The board ~~shall~~ may not refuse to renew a license for any reason other than failure to pay a required fee, unless it has afforded the licensee an opportunity for an adjudicatory hearing. The 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 by the board within 30 days of the applicant's receipt of written notice of the denial of ~~his~~ the application, the reason for the denial and ~~his~~ the applicant's right to request a hearing. Hearings ~~shall~~ must be conducted in conformity with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV, to the extent applicable. The board may subpoena witnesses, records and documents in any hearing it conducts.

Sec. 5. 32 MRSA §64-A, sub-§2, as enacted by PL 1983, c. 378, §2, is amended to read:

2. Grounds for discipline. The board may suspend or revoke a license pursuant to Title 5, section 10004. The following ~~shall be~~ are grounds for an action to refuse to issue, modify, suspend, revoke or refuse to renew the license of a person licensed under this chapter:

- A. The practice of fraud or deceit in obtaining a license under this chapter or in connection with service rendered within the scope of the license issued;
- B. Habitual intemperance in the use of alcohol or the habitual use of narcotic or hypnotic or other substances the use of which has resulted or may result in the licensee performing ~~his~~ assigned duties in a manner which endangers the health or safety of ~~his~~ patients;
- C. A professional diagnosis of a mental or physical condition which has resulted or may result in the licensee performing ~~his~~ assigned duties in a manner which endangers the health or safety of ~~his~~ patients;
- D. Aiding or abetting the practice of administration of a medical care facility by a person not duly li-

censed under this chapter and who ~~represents him-~~ self purports to be so;

E. Incompetence in the practice for which ~~he~~ that person is licensed. A licensee ~~shall be deemed is~~ considered incompetent in the practice if the licensee has:

(1) Engaged in conduct which evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client or patient or the general public; or

(2) Engaged in conduct which evidences a lack of knowledge, or inability to apply principles or skills to carry out the practice for which ~~he~~ that person is licensed;

F. Unprofessional conduct. A licensee ~~shall be deemed is~~ considered to have engaged in unprofessional conduct if ~~he~~ that person violates any standard of professional behavior which has been established in the practice for which the licensee is licensed;

G. Subject to the limitations of Title 5, chapter 341, conviction of a crime which involves dishonesty or false statement or which relates directly to the practice for which the licensee is licensed, or conviction of any crime for which incarceration for one year or more may be imposed;

H. Any violation of this chapter or any rule adopted by the board; or

I. Engaging in false, misleading or deceptive advertising.

Sec. 6. 32 MRSA §66, as enacted by PL 1985, c. 233, §6, is repealed and the following enacted in its place:

§66. Enforcement

1. Injunction. 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.

2. Criminal penalty. Any person who operates a medical care facility other than a hospital without holding a current license as an administrator or a temporary permit issued pursuant to this chapter commits a Class E crime.

Sec. 7. Allocation. The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

	1991-92	1992-93
PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF		
Nursing Home Administrators Licensing Board		
Personal Services	\$420	\$420
All Other	500	500
Provides funds for the per diem and expenses of an additional board member.		
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION		
TOTAL	<u>\$920</u>	<u>\$920</u>

See title page for effective date.

CHAPTER 342

H.P. 1219 - L.D. 1777

An Act to Deregulate Mobile Telecommunications Services

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

Sec. 1. 35-A MRSA §102, sub-§9-A is enacted to read:

9-A. Mobile telecommunications services. "Mobile telecommunications services" means telecommunications services licensed by the Federal Communications Commission for mobile use.

Sec. 2. 35-A MRSA §102, sub-§13, as enacted by PL 1987, c. 141, Pt. A, §6, is repealed and the following enacted in its place:

13. Public utility. "Public utility" includes every gas utility, natural gas pipeline utility, electric utility, telephone utility, telegraph utility, water utility, public heating utility and ferry, as those terms are defined in this section, and each of those utilities is declared to be a public utility. "Public utility" does not include the operation of a radio paging service, as that term is defined in this section, or mobile telecommunications services unless only one entity or an affiliated interest of that entity, as defined in section 707, subsection 1, paragraph A, exclusively controls the use of the radio frequency spectrum assigned by the Federal Communications Commission to provide mobile service to the service area.

Nothing in this subsection precludes:

A. The jurisdiction, control and regulation by the commission pursuant to private and special act of the Legislature;

B. The commission's jurisdiction and control over and regulation of a public utility that provides, in addition to other services, radio paging service or mobile telecommunications services;

C. The commission's jurisdiction and control over and regulation of basic exchange telephone service offered by a provider of mobile telecommunications services if, after investigation and hearing, the commission determines that the provider is engaged in the provision of basic exchange telephone service; and

D. Negotiations for, or negates agreements or arrangements existing on the effective date of this paragraph relating to, rates, terms and conditions for interconnection provided by a telephone utility to a company providing radio paging or mobile telecommunications services.

Sec. 3. 35-A MRSA §102, sub-§14, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

14. Radio common carrier. "Radio common carrier" means ~~a telephone utility~~ an entity that communicates solely provides communications services primarily by use of radio or other wireless means.

Sec. 4. 35-A MRSA §2102, sub-§2, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

2. Approval not required. Except as provided in section 2104, the commission's approval is not required for a public utility to furnish service in any municipality in which that public utility is furnishing service on October 8, 1967. Approval is not required for the operation of a radio paging service or mobile telecommunications services. Approval is not required for an electric utility to sell and distribute electricity to any other electric utility.

Sec. 5. 35-A MRSA c. 89 is enacted to read:

CHAPTER 89

MOBILE TELECOMMUNICATIONS SERVICES

§8901. Separate accounting required

Any public utility that provides mobile telecommunications services in addition to public utility services shall maintain a separate set of accounting records with respect to those services or establish a separate subsidiary for that purpose. The creation of a subsidiary is subject to commission approval under section 708, subsection 2. The commission may exempt a public utility from this requirement for good cause. The commission has jurisdiction over the manner in which joint and common costs, investments, overhead and expenses are allocated between mobile telecommunications services and public utility services.

See title page for effective date.