

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND FIFTEENTH LEGISLATURE

THIRD SPECIAL SESSION

October 1, 1992 to October 6, 1992

FOURTH SPECIAL SESSION

October 16, 1992

ONE HUNDRED AND SIXTEENTH LEGISLATURE

FIRST REGULAR SESSION

December 2, 1992 to July 14, 1993

THE GENERAL EFFECTIVE DATE FOR
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NON-EMERGENCY LAWS IS
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PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1993

PUBLIC LAWS
OF THE
STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION

of the
ONE HUNDRED AND SIXTEENTH LEGISLATURE

1993

amount of taxes having been paid, the appeal process must be suspended until the appropriate amount of taxes, together with any accrued interest and costs, has been paid. This section applies to any property tax year beginning on or after April 1, 1993.

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

Effective June 4, 1993.

CHAPTER 243

S.P. 203 - L.D. 639

An Act to Make Corrections to the Salary Reductions Authorized in Public Law 1991, Chapter 780, Part III

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

Whereas, a correction is needed to the fiscal year 1992-93 salary reductions authorized in Public Law 1991, chapter 780, Part III to be consistent with the fiscal year 1991-92 salary reductions authorized in Public Law 1991, chapter 671, Part Q; and

Whereas, it is important to correct this inconsistency as soon as possible; 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. PL 1991, c. 780, Pt. III, §1 is amended by adding at the end a new paragraph to read:

This section does not apply to represented employees of the University of Maine System, nonrepresented faculty department chairs of the University of Maine System and full-time faculty of the University of Maine School of Law.

Sec. 2. PL 1991, c. 780, Pt. III, §2 is amended by adding at the end a new paragraph to read:

This section does not apply to represented employees of the University of Maine System, nonrepresented faculty department chairs of the University of Maine System and full-time faculty of the University of Maine School of Law.

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

Effective June 4, 1993.

CHAPTER 244

H.P. 790 - L.D. 1076

An Act to Amend the Laws Governing Adverse Possession of Real Estate

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

Sec. 1. 14 MRSA §810-A is enacted to read:

§810-A. Mistake of boundary line establishes hostility

If a person takes possession of land by mistake as to the location of the true boundary line and possession of the land in dispute is open and notorious, under claim of right, and continuous for the statutory period, the hostile nature of the claim is established and no further evidence of the knowledge or intention of the person in possession is required.

Sec. 2. Application. This Act applies to actions filed after the effective date of this Act. This Act also applies to any period for which hostile possession is claimed, whether before or after the effective date of this Act.

See title page for effective date.

CHAPTER 245

H.P. 982 - L.D. 1313

An Act to Amend the Laws Concerning Massage Therapists

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

Sec. 1. 32 MRSA §14301, sub-§3, as enacted by PL 1991, c. 403, §1, is amended to read:

3. Massage therapist or massage practitioner. "Massage therapist" or "massage practitioner" means a person who provides or offers to provide massage therapy for a fee, monetary or otherwise. This definition includes the use of different forms of the term "massage therapist" or "massage practitioner," such as "masseuse" or "masseur."

Sec. 2. 32 MRSA §14302, sub-§7, as enacted by PL 1991, c. 403, §1, is amended to read:

7. Advisory council. The commissioner, as necessary, may select members of the profession and other interested parties to serve on an advisory council to advise and consult with the commissioner concerning the regulation of massage therapists and massage practitioners. Service on the council is not in itself a conflict of interest regardless of the occupations or associations of the members.

Sec. 3. 32 MRSA §14304, sub-§1, as enacted by PL 1991, c. 403, §1, is amended to read:

1. Registration required. Effective January 1, ~~1992~~ 1994 a person, unless specifically exempted by this chapter, may not use the title "massage ~~therapist practitioner~~" or profess to be a massage ~~therapist practitioner~~ unless registered in accordance with this chapter.

Each individual using the title "massage ~~therapist practitioner~~" or professing to be a massage ~~therapist practitioner~~ shall register with the department every year. Each individual who registers shall fill out a form designated by the department. Registration expires yearly on ~~December 31st~~ the anniversary date of the individual's initial registration or on such other date as the commissioner determines. Notice of expiration must be mailed to each registered massage ~~therapist's practitioner's~~ last known address at least 30 days before the expiration of the registration. The notice must include any requests for information necessary for renewal.

A late fee of \$10 is assessed on any registration renewal that is postmarked later than the anniversary date of the individual's initial registration. If, after 90 days from the anniversary date, an individual has not renewed the registration, the individual must reapply for registration.

Sec. 4. 32 MRSA §14305, first ¶, as enacted by PL 1991, c. 403, §1, is amended to read:

To be eligible for registration as a massage ~~therapist~~ practitioner, an applicant must:

Sec. 5. 32 MRSA §14305, sub-§§3 and 5, as enacted by PL 1991, c. 403, §1, are amended to read:

3. Doctor's certificate. Present a written statement from a licensed physician licensed to practice in the State stating that the applicant has been examined and found to be free of an infectious or communicable disease and showing that there is no evidence of a communicable disease that would likely be transmitted to a client through the techniques of massage. The statement must also show that the examination was conducted within 60 days prior to the submission of the application;

5. References. Present 3 character references citing that the applicant is of good moral character, one of which must be from a health care provider who is not a massage therapist or massage practitioner;

Sec. 6. 32 MRSA §14306, as enacted by PL 1991, c. 403, §1, is repealed.

Sec. 7. 32 MRSA §§14306-A and 14306-B are enacted to read:

§14306-A. Certification

1. Certification required. Effective January 1, 1994, a person, unless specifically exempted by this chapter, may not use the title "massage therapist" or profess to be a massage therapist unless certified in accordance with this chapter.

Each individual using the title "massage therapist" or professing to be a massage therapist shall apply to be certified by the department every year. Each individual who applies for certification shall fill out a form designated by the department. Certification expires on the anniversary of the date of the initial application or on such other date as the commissioner determines. Notice of expiration must be mailed to each certified massage therapist's last known address at least 30 days before the expiration of the certification and must request any information necessary for renewal.

A late fee of \$10 is assessed on any certification renewal that is postmarked later than the anniversary date of the individual's initial certification. If, after 90 days from the anniversary date, an individual has not renewed the certification, the individual is required to reapply for certification.

2. Individual certification. Only an individual may be certified under this chapter.

§14306-B. Requirements for certification

To be eligible for certification as a massage therapist, an applicant must:

1. Proof of knowledge. Pass the National Certification Examination for Therapeutic Massage and Bodywork administered by the Psychological Corporation or have a diploma from a school of massage therapy that is accredited by the Commission on Massage Training Accreditation/Approval, or its successor organization. Active members of the American Massage Therapy Association or graduates of schools approved by the American Massage Therapy Association may be certified without proof of passing the National Certification Examination for Therapeutic Massage and Bodywork until January 1, 1995;

2. Age. Be at least 18 years of age;

3. High school. Possess a high school diploma or its equivalent;

4. Photograph. Furnish to the department a signed photograph of the applicant. The photograph must be a minimum size of 5 inches by 3 inches; and

5. Fee. Pay a one-time application fee of \$25 and a yearly certification fee of \$100. All fees are nonrefundable.

Sec. 8. 32 MRSA §§14307 and 14308, as enacted by PL 1991, c. 403, §1, are amended to read:

§14307. Exemptions to registration or certification

1. Other professionals. This chapter does not apply to the activities or services of members of other professions licensed, certified or registered by the State, including, but not limited to, physicians, chiropractors, physical therapists, cosmetologists or registered nurses performing soft tissue manipulation consistent with the laws of the State governing their practices, provided they do not use the title "massage therapist" or "massage practitioner."

2. Other exemptions. This chapter does not apply to the activities and services of individuals who practice other forms of tissue work exclusive of massage therapy, such as rolfing, Trager, reflexology, Shiatsu, Reiki and polarity, if those practitioners do not use the title "massage therapist" or "massage practitioner," unless they choose to meet the requirements of this chapter.

§14308. Disciplinary action; grounds; procedure; complaints

1. Grounds. The commissioner may suspend, revoke or refuse to renew registration or certification under the same grounds as contained in Title 5, section 10004. In addition, the commissioner may take the same action granted to bureaus, boards and commissions pursuant to Title 10, section 8003, subsection 5. The commissioner's actions may be based on any of the following grounds:

A. The practice of fraud or deceit in obtaining registration or certification status under this chapter or in connection with service rendered within the scope of the registration or certificate issued;

B. Habitual intemperance in the use of alcohol or the habitual use of narcotic or other drugs that has resulted in the regulated person being unable to perform necessary duties or performing those duties in a manner that would endanger the health or safety of clients;

C. A current medical finding of mental incompetence that affects the registrant's or certified person's ability to perform the registrant's that person's occupation in a healthy and safe manner;

D. Aiding or abetting persons not duly registered or certified under this chapter who profess to be registered or certified;

E. Subject to the limitations of Title 5, chapter 341, conviction of a crime that involves dishonesty or false statement or that directly relates to the practice of massage therapy or conviction of a crime for which incarceration for one year or more may be imposed;

F. Revocation in any state of a professional or occupational license, certification or registration for disciplinary reasons, or rejection of any application for reasons related to untrustworthiness, within 3 years of the date of application; and

G. Violating any provisions of this chapter or any rule of the department.

2. Procedure. Except as provided in Title 5, section 10004, a registration or certification may not be denied, suspended, revoked or refused for renewal for the reasons set forth in subsection 1 without prior written notice and opportunity for hearing on that denial, suspension or revocation. A registration or certification may not be denied, suspended or revoked under this section except by a decision of the commissioner or the commissioner's designee.

3. Complaints. Any person may file a complaint with the commissioner seeking disciplinary action against a massage therapist or massage practitioner concerning violations of this chapter or rules adopted by the department. Complaints must be in writing. If the commissioner determines that a complaint alleges facts that, if true, would require denial, revocation, suspension or nonrenewal or other disciplinary action of a registered practitioner or certified therapist, the commissioner or the commissioner's designee may conduct a hearing pursuant to the Maine Administrative Procedure Act. Whenever the commissioner establishes that a complaint does not state facts that warrant action, the complaint may be dismissed.

The commissioner shall conduct proceedings under this subsection in accordance with the provisions of Title 5, chapter 375, subchapter IV.

Sec. 9. 32 MRSA §14310, as enacted by PL 1991, c. 403, §1, is amended to read:

§14310. Home rule

Nothing in this chapter prohibits a municipality from adopting or enforcing an ordinance that regulates massage, massage practitioners or massage therapists. If a municipality adopts such an ordinance, an individual must comply with the provisions of this chapter and any provision of the local ordinance that is more restrictive than this chapter.

Sec. 10. 32 MRSA §14311 is enacted to read:

§14311. Reciprocity

Reciprocity is granted to individuals from other states as long as they meet the requirements of this chapter for status as certified massage therapists or registered massage practitioners and show proof of current certification or registration from their states.

See title page for effective date.

CHAPTER 246

H.P. 940 - L.D. 1269

An Act to Authorize the Commissioner of Inland Fisheries and Wildlife to Alter the Deer Seasons

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

Sec. 1. 12 MRSA §7457, sub-§1, ¶I is enacted to read:

I. The commissioner, by rule, may create special hunting seasons for the taking of deer in any part of the State to maintain deer populations in balance with available habitat, subject to the following.

(1) The demarcation of each area must follow recognizable physical boundaries, such as rivers, roads and railroad rights-of-way.

(2) The determination of these areas must be made and published prior to August 1st of each year.

(3) The commissioner may implement a permit system to regulate hunter participation in a special season and the number, sex and age of deer harvested.

(4) Special hunts must take place between the close of the special muzzle-loading season and January 31st.

(5) The commissioner may establish limits on the number of deer taken or possessed by persons during any special season. Lim-

its established by the commissioner under this subparagraph are exceptions to the limits imposed under section 7458, subsections 1 and 2.

(6) The commissioner may specify types of weapons to be used during a special season.

See title page for effective date.

CHAPTER 247

H.P. 1028 - L.D. 1380

An Act Regarding Registration of Nursing Assistants

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

Sec. 1. 22 MRSA §1812-G, sub-§2, ¶A, as enacted by PL 1991, c. 421, §1, is amended to read:

A. Any convictions of abuse, neglect or misappropriation of property of a resident, client or patient ~~an individual~~; and

See title page for effective date.

CHAPTER 248

S.P. 245 - L.D. 764

An Act to Determine Eligibility of Child for Benefits

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

Sec. 1. 22 MRSA §4007, sub-§6, as enacted by PL 1991, c. 840, §6, is repealed and the following enacted in its place:

6. Benefits and support for children in custody of department. When a child has been ordered into the custody of the department under this chapter, Title 15, chapter 507 or Title 19, chapter 13, within 30 days of the order, each parent shall provide the department with information necessary for the department to make a determination regarding the eligibility of the child for state, federal or other 3rd-party benefits, and shall provide any necessary authorization for the department to apply for these benefits for the child.

Prior to a hearing under section 4034, subsection 4, section 4035 or section 4038, each parent shall file income affidavits as required by Title 19, sections 312 and 314, unless current information is already on file with the