

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**  
**ONE HUNDRED AND SEVENTEENTH LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 7, 1994 to June 30, 1995**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 29, 1995**

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

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**J.S. McCarthy Company**  
**Augusta, Maine**  
**1995**

as provided in section 17154. Any payment made under paragraph B, subparagraph (1) must be included in determining the amount of increase in the year in which the payment is made. This paragraph does not apply to excess increases resulting from compensation paid prior to July 1, 1993, from compensation paid in accordance with an individual employment contract executed prior to July 1, 1993 or a collective bargaining agreement executed or ratified in its final form by final vote of one party to the agreement prior to July 1, 1993 for the initial term of that contract or agreement or from other action by the governing body of a school administrative unit in effect on July 1, 1993. This paragraph does not apply to increases in compensation of state employees during fiscal year 1993-94 and fiscal year 1994-95. In all circumstances in which this paragraph does not apply to earnable compensation of state employees and teachers, the provisions of this paragraph that were in effect prior to June 30, 1993 apply. This paragraph does not apply to earnable compensation of employees of participating local districts.

**Sec. 2. 5 MRSA §17001, sub-§32, ¶B,** as repealed and replaced by PL 1993, c. 250, §1, is amended to read:

B. For a retired participating local district employee:

(1) Except as provided in subparagraph (2), "restoration to service" means acceptance of employment with the participating local district from which the employee retired; and

(2) After the date on which a ~~participating local district's~~ the consolidated plan under chapter 427 goes into operation, for a participating local district employee who retires from a participating local district that at the time of the employee's retirement is in the consolidated plan, "restoration to service" means acceptance of employment with ~~any district that participates in the consolidated plan. This subparagraph applies to employees who retire before a consolidated plan goes into operation as well as to those who retire after a consolidated plan has gone into operation~~ the participating local district from which the employee retired or with any other participating local district that is in the consolidated plan at the time the employee accepts employment.

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

Effective June 21, 1995.

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## CHAPTER 275

H.P. 699 - L.D. 957

### An Act to Require Licensure for Use of the Title Athletic Trainer

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

**Sec. 1. 32 MRSA c. 127-A** is enacted to read:

#### CHAPTER 127-A

#### ATHLETIC TRAINERS

##### §14351. Purpose

The Legislature finds that the practice of athletic training affects the public health, safety and welfare and is subject to regulation and control in the public interest. The purpose of this chapter is to protect the public from the unqualified use of the term "athletic trainer" and from unprofessional conduct by persons licensed to use the term "athletic trainer."

##### §14352. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Athlete.** "Athlete" means a physically active individual training for or participating in an amateur, educational or professional athletic organization or any other association that sponsors athletic programs or events in the State.

**2. Athletic injury.** "Athletic injury" means a disruption of tissue continuity that is sustained by an athlete or recreational athlete when that injury:

A. Results from that individual's participation in or training for sports, fitness training or other athletic competition; or

B. Restricts or prevents that individual from participation in those activities.

**3. Athletic trainer.** "Athletic trainer" means a person licensed by the department to use that title after meeting the requirements of this chapter.

**4. Athletic training.** "Athletic training" means:

- A. Prevention of athletic injuries;
- B. Recognition and evaluation of athletic injuries;
- C. Management, treatment and disposition of athletic injuries;
- D. Rehabilitation of athletic injuries;
- E. Organization and administration of an athletic training program; and
- F. Education and counseling of athletes, recreational athletes, coaches, family members, medical personnel and communities in the area of care and prevention of athletic injuries.

**5. Commissioner.** "Commissioner" means the Commissioner of Professional and Financial Regulation.

**6. Department.** "Department" means the Department of Professional and Financial Regulation.

**7. Recreational athlete.** "Recreational athlete" means an individual participating in fitness training and conditioning, sports or other athletic competition, practices or events requiring physical strength, agility, flexibility, range of motion, speed or stamina and who is not affiliated with an amateur, educational or professional athletic organization or any association that sponsors athletic programs or events in the State.

#### **§14353. Commissioner; powers and duties**

The commissioner or the commissioner's designee has the following powers and duties in addition to all other powers and duties set forth in this chapter.

- 1. Standards.** The commissioner shall administer and enforce the standards under this chapter.
- 2. Rules.** The commissioner shall adopt rules in accordance with the Maine Administrative Procedure Act necessary to carry out the purposes of this chapter.
- 3. Complaints.** The commissioner shall investigate all complaints and cases of noncompliance concerning violations of this chapter or rules adopted by the department, made on the commissioner's own motion or on written complaint filed with the department.
- 4. Contracts.** The commissioner may enter into contracts to carry out the commissioner's responsibilities under this chapter.
- 5. Hearings.** The commissioner may conduct hearings to assist with investigations and to determine whether grounds exist for denial of reregistration,

suspension of registration or other action necessary to the fulfillment of the commissioner's responsibilities under this chapter.

**6. Advisory council.** The commissioner shall select members of the athletic training community to serve on an advisory council and to consult with the commissioner concerning the regulation of athletic trainers. The council membership must represent each of the following categories: high schools, clinical or industrial organizations, colleges or universities and professional sports. The department shall solicit recommendations from the council relative to rules involving athletic trainers and may solicit the council's advice on any other matter. The council may submit recommendations to the department concerning any matter and the department shall consider the recommendations in making its decisions. Membership on the council is not a conflict of interest regardless of the occupations or associations of the members.

**7. Employees.** The commissioner may appoint, subject to the Civil Service Law, employees necessary to carry out this chapter and those employees are considered to be under the department.

**8. Budget.** The commissioner shall prepare a budget in accordance with Title 5, section 1665 to carry out the purposes of this chapter.

#### **§14354. Necessity for licensure**

Beginning January 1, 1996 a person may not profess to be an athletic trainer or use the title "athletic trainer" alone or in connection with other words or the initials "AT" alone or in connection with other initials, whether or not compensation is received, unless licensed in accordance with this chapter.

**1. Athletic training.** When providing athletic training to an athlete without referral from a doctor of medicine, osteopathy, podiatry or dentistry, the athletic trainer is subject to the following requirements.

A. An athletic trainer may not make a medical diagnosis. The athletic trainer shall refer to a licensed doctor of medicine, osteopathy, podiatry or dentistry an athlete whose physical condition, either at the initial evaluation or during subsequent treatment, the athletic trainer determines to be beyond the scope of the practice of the athletic trainer.

B. If there is no improvement in an athlete who has sustained an athletic injury within 15 days of initiation of treatment, the athletic trainer shall refer the athlete to a licensed doctor of medicine, osteopathy, podiatry or dentistry or a licensed physical therapist.

C. If an athletic injury requires treatment for more than 45 days, the athletic trainer shall consult with, or refer the athlete to, a licensed doctor of medicine, surgery, osteopathy, podiatry or dentistry or a licensed physical therapist. The athletic trainer shall document the action taken.

**2. Training of recreational athlete.** When providing athletic training to the recreational athlete, for other than emergency care or the care of minor sprains, strains and contusions, the athletic trainer shall refer the athlete to a doctor of medicine, osteopathy, podiatry or dentistry or a licensed physical therapist.

For the treatment of the recreational athlete, for other than emergency care or the care of minor sprains, strains and contusions, the athletic trainer must receive referral from a doctor of medicine, osteopathy, podiatry or dentistry or a licensed physical therapist.

When providing care and treatment to the recreational athlete sustaining minor sprains, strains and contusions, the athletic trainer is subject to the following requirements.

A. An athletic trainer may not make a medical diagnosis. The athletic trainer shall refer to a licensed doctor of medicine, osteopathy, podiatry or dentistry an athlete whose physical condition, either at the initial evaluation or during subsequent treatment, the athletic trainer determines to be beyond the scope of practice of the athletic trainer.

B. If there is no improvement in a recreational athlete who has sustained an athletic injury within 15 days of initiation of treatment, the athletic trainer shall refer the recreational athlete to a licensed doctor of medicine, osteopathy, podiatry or dentistry or a licensed physical therapist.

C. If an athletic injury requires treatment for more than 45 days, the athletic trainer shall consult with or refer the recreational athlete to a licensed doctor of medicine, osteopathy, podiatry or dentistry or a licensed physical therapist.

### **§14355. License violations**

Beginning January 1, 1996 a person who violates section 14354 or employs an unlicensed person in violation of that section is guilty of a Class E crime.

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

### **§14356. Exemptions**

Nothing in this chapter prevents or restricts the practice, services or activities of:

**1. Federal employee.** A person employed as an athletic trainer by the Federal Government or any federal agency if that person provides athletic training under the direction or control of that person's employing organization;

**2. Student athletic trainer.** A person fulfilling the requirements for licensure or pursuing a supervised course of study leading to a degree or certificate in athletic training at an accredited or approved educational program if the person is designated by a title that indicates that person's status as a student or trainee;

**3. Experience requirement.** A person fulfilling the supervised practical training requirements of this chapter if that training is necessary to meet the requirements of this chapter; or

**4. Visiting team.** A person performing athletic training services in the State for an out-of-state team that is in the State for competition at which an athletic trainer licensed under this chapter or a physician is available if these services are performed for no more than 4 days at a time or for no more than 30 days a year.

### **§14357. Qualifications for licensure**

**1. Qualifications.** To qualify for a license as an athletic trainer an applicant must:

A. Demonstrate that the applicant is trustworthy and competent to engage in practice as an athletic trainer in a manner that safeguards the interests of the public;

B. Be a graduate of a college or university approved by the department and have successfully completed that college's or university's curriculum in athletic training or other curricula acceptable to the department and have completed an athletic training education program approved by the National Athletic Trainers' Association or a program of practical training in athletic training acceptable to the department; and

C. Have passed the National Athletic Trainers' Association Board of Certification examination or be currently certified by the National Athletic Trainers' Association and approved by the department.

### **§14358. Applications for licensure; fees**

An applicant for initial licensure must submit a written application with supporting documents to the

department on forms provided by the department. The applicant must pay a nonrefundable application fee established by the department in an amount not to exceed \$50.

The department may license an applicant who meets the requirements of this chapter and pays the licensure fee as specified in section 14359. The original license and the renewal license for the current year must be conspicuously displayed at the place of employment of the licensee.

#### **§14359. Renewal**

All licenses must be renewed annually on or before March 31st of each year or such other times as the commissioner may designate. The annual licensure renewal fee must be established by the department by rulemaking and may not exceed \$100. The commissioner shall notify each licensee, at the licensee's last known address, 30 days in advance of the expiration of the license. Renewal notices must be on forms provided by the department. A license not renewed by March 31st automatically expires. The department may renew an expired license if the renewal application is returned within 90 days after the license expiration date and upon payment of a late fee of \$10 in addition to the renewal fee. A 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 department may in its discretion, giving consideration to the protection of the public, waive examination if the renewal application is made within 2 years from the date of that expiration.

For the purposes of satisfying the continuing education requirements each application for license renewal must include current National Athletic Trainers' Association certification.

#### **§14360. Temporary permits**

A temporary permit may be granted to a person who has completed the education and experience requirements of this chapter. This permit allows the person to use the title "student athletic trainer" when practicing under the direction of a licensed athletic trainer. This permit becomes invalid after 6 months or upon failure by the permittee of the National Athletic Trainers' Association Board of Certification examination, whichever event occurs first. The permit may not be renewed.

#### **§14361. Revocation and reissuance**

The department may suspend or revoke a license pursuant to Title 5, section 10004. In addition, the department may refuse to issue or renew a license pursuant to Title 10, subsection 8003 or the Adminis-

trative Court may revoke, suspend or refuse to renew a license of an athletic trainer for:

**1. Fraud.** The practice of fraud in obtaining a license under this chapter or in connection with services rendered as a licensed athletic trainer;

**2. Addiction.** Addiction to alcohol or other drugs resulting in the licensed athletic trainer's inability to perform that trainer's duties safely and competently;

**3. Incompetency.** A court finding of mental incompetency;

**4. Accomplice.** Aiding a person not duly licensed as an athletic trainer in misrepresentation as an athletic trainer;

**5. Misconduct.** Gross negligence, incompetency or misconduct in the practice of athletic training;

**6. Criminal conviction.** Conviction of a crime subject to the limitations of Title 5, chapter 341 that if committed in the State is punishable by one year or more of imprisonment;

**7. Violation.** Violation of this chapter or any rule adopted by the department; or

**8. Unethical conduct.** A finding of a violation of the National Athletic Trainers' Association Code of Professional Ethics by the National Athletic Trainers' Association Ethics Committee or a violation of the Professional Practice and Disciplinary Procedures of the National Athletic Trainers' Association Board of Certification by that board.

#### **§14362. Disposition of fees**

All money received pursuant to this chapter must be paid to the Treasurer of State and credited to the athletic trainers account within the budget of the Division of Licensing and Enforcement.

Money credited to the athletic trainers account must be used for the expenses of administering its statutory responsibilities, including, but not limited to, the costs of conducting investigations, taking testimony and procuring the attendance of witnesses, the costs of all legal proceedings initiated for enforcement and administrative expenses.

**Sec. 2. Report.** By January 1, 1997, the Department of Professional and Financial Regulation shall submit a brief written report and make an oral report on the status of licensing of athletic trainers to the joint standing committee of the Legislature having jurisdiction over business legislation and economic development matters and to the Executive Director of the Legislative Council with any implementing legislation.

1. This report must include a good faith effort to provide statistical information on the following subjects:

- A. The number of people who previously practiced athletic training who are no longer able to do so;
- B. The reduction in the number or severity of injuries due to the licensing of athletic trainers; and
- C. The fees charged by athletic trainers before and after the effective date of this Act.

2. The department shall include in the report the following data:

- A. A quantitative survey of school superintendents designed by the department, using as many closed-ended questions as possible on the final questionnaire and doing the necessary background work necessary to make the questionnaire easily answered. At least one followup must be made to nonrespondents;
- B. A report on the written and verbal responses received in connection with the public hearings necessitated by the requirement that athletic trainers be licensed; and
- C. The department shall develop a short quantitative questionnaire suitable to be placed in any newsletter published by the association athletic trainers of any state. The department shall encourage the association to include the questionnaire in its publication together with a brief summary of the new law.

**Sec. 3. Working capital advance.** The State Controller is authorized to advance to the Department of Professional and Financial Regulation, Division of Licensing and Enforcement, athletic trainers account up to \$7,630 in fiscal year 1995-96 from the General Fund unappropriated surplus for the operating costs of licensing athletic trainers. These funds will be used to provide the working capital advance necessary to cover the operating expenses of licensing athletic trainers until receipt of licensing fees as other special revenue. Funds advanced for this purpose must be returned to the General Fund unappropriated surplus no later than June 30, 1996.

**Sec. 4. Allocation.** The following funds are allocated from the Other Special Revenue fund to carry out the purposes of this Act.

1995-96      1996-97

**PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF**

**Division of Licensing and Enforcement - Athletic Trainers**

All Other	\$7,630	\$5,700
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Allocates funds to establish the licensure of athletic trainers.

See title page for effective date.

**CHAPTER 276**

**H.P. 437 - L.D. 603**

**An Act to Allow the Sale of Irradiated Food in the State**

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

**Sec. 1. 22 MRSA §2152, sub-§5-A,** as enacted by PL 1987, c. 174, §1, is repealed.

**Sec. 2. 22 MRSA §2155, sub-§10,** as amended by PL 1989, c. 376, is repealed.

See title page for effective date.

**CHAPTER 277**

**H.P. 1017 - L.D. 1432**

**An Act to Amend the Laws Regarding Workers' Compensation Pilot Projects**

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

**Sec. 1. 39-A MRSA §403, sub-§2, ¶¶A, B and D,** as enacted by PL 1991, c. 885, Pt. A, §8 and affected by §§9 to 11, are amended to read:

- A. The Superintendent of Insurance shall adopt rules to enable employers and employees to enter into agreements to provide the employees with health care benefits covering workplace injury and illness and nonworkplace injury and illness and other health care benefits, or health care and indemnity benefits covering workplace injury and illness and nonworkplace injury and illness