

# MAINE STATE LEGISLATURE

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

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

**SECOND SPECIAL SESSION**  
**September 5, 1996 to September 7, 1996**

**ONE HUNDRED AND EIGHTEENTH LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 4, 1996 to March 27, 1997**

**FIRST SPECIAL SESSION**  
**March 27, 1997 to June 20, 1997**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JUNE 26, 1997**

**FIRST SPECIAL SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 19, 1997**

**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**  
**1997**

accordance with this paragraph will continue to be liable for payments in lieu of contributions, until it files with the bureau a written notice terminating its election not later than 30 days prior to the beginning of the calendar year for which such termination ~~shall~~ is first ~~be~~ effective.

**Sec. 7. 26 MRSA §1221, sub-§11, ¶E**, as amended by PL 1975, c. 462, §5, is further amended to read:

E. Past-due payments of amounts in lieu of contributions ~~shall be~~ are subject to the same interest, penalties and collection provisions that, pursuant to section 1225, ~~subsection~~ subsections 3 and 4, sections 1229, 1230 and 1231 apply to past-due contributions.

**Sec. 8. 26 MRSA §1221, sub-§11, ¶F**, as amended by PL 1977, c. 694, §479, is further amended to read:

F. The ~~commission~~ commissioner shall promptly review and reconsider the amount due specified in the assessment and shall thereafter issue a redetermination in any case in which such application for redetermination has been filed. Any such redetermination ~~shall be~~ is conclusive on the employer or governmental entity unless the employer or governmental entity files an appeal in accordance with Title 5, ~~section 11001 et seq~~ chapter 375, subchapter VII.

**Sec. 9. 26 MRSA §1251, sub-§3, ¶A**, as amended by PL 1987, c. 131, is further amended to read:

A. Any hotel, motel, inn, variety store, trading post, sporting camp or other lodging facility, including camps operated for boys and girls, restaurants and other eating establishments, which customarily conducts ~~its~~ operations ~~which~~ that are primarily related to the production of ~~its~~ characteristic goods or services for a regularly recurring period or periods of less than 26 weeks in any one calendar year ~~shall be~~ is deemed seasonal.

See title page for effective date.

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## CHAPTER 294

H.P. 1151 - L.D. 1616

### An Act to Amend the Laws Regulating Occupational Therapy Practice

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

**Sec. 1. 32 MRSA §2271**, as enacted by PL 1983, c. 746, §2, is amended to read:

#### **§2271. Declaration of purpose**

In order to safeguard the public health, safety and welfare, to protect the public from incompetent and unauthorized persons; to assure the highest degree of professional conduct on the part of occupational therapists and certified occupational therapy assistants; and to assure the availability of occupational therapy services of high quality to persons in need of those services, it is the purpose of this chapter to provide for the regulation of persons offering occupational therapy services.

**Sec. 2. 32 MRSA §2272**, as corrected by RR 1993, c. 1, §87, is repealed and the following enacted in its place:

#### **§2272. Definitions**

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

**1. ACOTE.** "ACOTE" means the Accreditation Council for Occupational Therapy Education, a nationally recognized accrediting agency for professional programs in the field of occupational therapy.

**2. AOTA.** "AOTA" means the American Occupational Therapy Association.

**3. Board.** "Board" means the Board of Occupational Therapy Practice established under this chapter.

**4. Certification examination.** "Certification examination" means the certification examination for a registered occupational therapist or the certification examination for certified occupational therapy assistant, both of which are administered by NBCOT.

**5. Certified occupational therapy assistant.** "Certified occupational therapy assistant" means an individual who has passed the certification examination of the National Board for Certification in Occupational Therapy for an occupational therapy assistant or who was certified as an occupational therapy assistant prior to June 1977 and who is licensed to practice occupational therapy under this chapter in the State under the supervision of an occupational therapist.

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

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

**8. Developing programs.** "Developing programs" means programs that submitted a letter of intent to seek accreditation by ACOTE prior to December 1, 1994.

**9. Level II fieldwork.** "Level II fieldwork" means the experience required to prepare occupational therapy and occupation therapy assistant students to carry out professional responsibilities under appropriate supervision and professional role modeling.

A minimum of 6 months, or 940 hours, of level II fieldwork is required for occupational therapy educational programs.

A minimum of 12 weeks, or 440 hours, of level II fieldwork is required for occupational therapy assistant educational programs.

**10. NBCOT.** "NBCOT" means the National Board for Certification in Occupational Therapy, formerly the AOTCB, or American Occupational Therapy Certification Board.

**11. Occupational therapist.** "Occupational therapist" means an individual who has passed the certification examination of the National Board for Certification in Occupational Therapy for an occupational therapist or meets the requirements of section 2279, subsection 6 and who is licensed to practice occupational therapy under this chapter in the State.

**12. Occupational therapy.** "Occupational therapy" means the assessment, planning and implementation of a program of purposeful activities to develop or maintain adaptive skills necessary to achieve the maximal physical and mental functioning of the individual in the individual's daily pursuits. The practice of "occupational therapy" includes, but is not limited to, assessment and treatment of individuals whose abilities to cope with the tasks of living are threatened or impaired by developmental deficits, the aging process, learning disabilities, poverty and cultural differences, physical injury or disease, psychological and social disabilities or anticipated dysfunction, using:

A. Treatment techniques such as task-oriented activities to prevent or correct physical or emotional deficits or to minimize the disabling effect of these deficits in the life of the individual;

B. Assessment techniques such as assessment of cognitive and sensory motor abilities, assessment of the development of self-care activities and capacity for independence, assessment of the physical capacity for prevocational and work tasks, assessment of play and leisure performance and appraisal of living areas for the disabled; and

C. Specific occupational therapy techniques such as daily living skill activities, the fabrication and application of splinting devices, sensory motor activities, the use of specifically designed manual and creative activities, guidance in the selection and use of adaptive equipment, specific exercises to enhance functional performance and treatment techniques for physical capabilities for work activities.

The techniques may be applied in the treatment of individuals or groups.

**13. Person.** "Person" means any individual, partnership, unincorporated organization or corporation.

**14. Supervision of COTA.** "Supervision of COTA" means initial directions and periodic inspection of the service delivery and provision of relevant in-service training. The supervising licensed occupational therapist shall determine the frequency and nature of the supervision to be provided based on the clients' required level of care and the COTA's caseload, experience and competency.

**15. Supervision of temporary licensees.** "Supervision of temporary licensees" includes initial and periodic inspection or written assessments, written treatment plans, patient notes and periodic evaluation of performance. The reviews and evaluations must be conducted in person by a licensed occupational therapist.

**Sec. 3. 32 MRSA §2276**, as amended by PL 1987, c. 597, §4, is further amended to read:

**§2276. License required**

**1. License required.** ~~No person may practice, or hold himself out as authorized to practice occupational therapy, as an occupational therapist or certified occupational therapist in this State or use the words "occupational therapist" or "certified occupational therapy assistant" or the letters "O.T." "C.O.T.A." or other words or letters to indicate that the person using the words or letters is a licensed occupational therapist or certified occupational therapy assistant, unless he is licensed in accordance with this chapter.~~

**1-A. License required.** A person may not practice, or profess to be authorized to practice occupational therapy, as an occupational therapist or certified occupational therapist in this State or use the words "occupational therapist," "Registered Occupational Therapist," "occupational therapy assistant" or "certified occupational therapy assistant" or the letters "O.T." "O.T.A." "C.O.T.A." or other words or letters to indicate that the person using the words or letters is a licensed occupational therapist or certified occupational therapy assistant, or which may misrepresent to

the public that the person has received formalized training in the field of occupational therapy, unless that person is licensed in accordance with this chapter.

This subsection is not intended to prohibit occupational therapy students and occupational therapy assistant students completing fieldwork from using the letters "O.T.S." and "O.T.A.S." respectively.

**2. Individual license.** Only an individual may be licensed under this chapter.

**3. Penalty; injunction.** A person who violates the provisions of this section ~~or any lawful order or rule of the board~~ 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 proceedings have been or may be instituted in the Administrative Court or whether criminal proceedings have been or may be instituted.

**Sec. 4. 32 MRSA §2277**, as amended by PL 1991, c. 509, §§10 and 11, is further amended to read:

**§2277. 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 person licensed in this State by any other law from engaging in the profession or occupation for which ~~he~~ the person is licensed;

**2. Students or trainees.** Any person pursuing a supervised course of study leading to a degree or certificate in occupational therapy at a developing or an accredited or approved educational program, if the person is designated by a title which that clearly indicates that person's status as a student or trainee; or, At the discretion of the supervising occupational therapist, the student or trainee may be assigned duties or functions commensurate with the student's or trainee's education and training.

Occupational therapy students and occupational therapy assistant students completing fieldwork may use the letters "O.T.S." and "O.T.A.S." respectively.

~~**3. Supervised fieldworkers.** Any person fulfilling the supervised fieldwork experience requirements of section 2279, subsection 4, if the experience constitutes a part of the experience necessary to meet the requirement of that subsection.~~

**Sec. 5. 32 MRSA §2278**, as amended by PL 1991, c. 509, §12, is repealed and the following enacted in its place:

**§2278. Temporary license**

A temporary license may be granted to a person who has completed the education and level II fieldwork requirements of this chapter and who has also received NBCOT approval to sit for the appropriate certification examination. This temporary license allows the holder to practice occupational therapy under the supervision of a licensed occupational therapist. Temporary licensees shall take the first available national examination for which they become eligible.

A temporary license is valid until the results of the national examination are made available to the board. If the person has passed the national examination, a license must be issued under sections 2279 and 2280-A. The temporary license of a person who has failed the examination may be renewed one time at the discretion of the board.

If, for a legitimate reason, a person holding a temporary license does not take the first available national examination for which the person becomes eligible, the person must submit a letter to the board explaining the circumstances. After review, the board, at its discretion, may renew the person's temporary license once to allow the person to sit for the next scheduled national examination.

A temporary license may not be renewed more than once.

Foreign trained applicants must receive approval to sit for the examination from NBCOT in order to be eligible for a temporary license.

**Sec. 6. 32 MRSA §2279**, as amended by PL 1991, c. 509, §13, is further amended to read:

**§2279. Requirements for licensure**

An applicant applying for a license as ~~an~~ a certified occupational therapist or as an occupational therapy assistant ~~shall~~ must file a written application provided by the board, showing to the satisfaction of the board that ~~he~~ the applicant meets the following requirements.

**1. Residence.** An applicant need not be a resident of this State.

~~**2. Character.** An applicant shall have demonstrated ethical practice.~~

**2-A. Character references.** An applicant must submit 2 completed character reference forms acceptable to the board.

**3. Education.** An applicant ~~shall~~ must present evidence satisfactory to the board of having successfully completed the academic and fieldwork requirements of an educational program in occupational

therapy ~~recognized by the board~~ or occupational therapy assisting.

A. ~~The occupational therapy or occupational therapy assisting educational program must be accredited by the Committee on Allied Health Education and Accreditation of the American Medical Association in collaboration with the American Occupational Therapy Certification Board ACOTE.~~

B. ~~The occupational therapy assistant educational program must be approved by the American Occupational Therapy Certification Board.~~

~~4. Experience. An applicant shall submit to the board evidence of having successfully completed a period of supervised fieldwork experience arranged by the recognized educational institution where he met the academic requirements or by the nationally recognized professional association.~~

A. ~~For an occupational therapist, a minimum of 6 months of supervised fieldwork experience is required.~~

B. ~~For an occupational therapy assistant, a minimum of 2 months of supervised fieldwork experience is required.~~

5. **Examination.** An applicant for licensure as an occupational therapist or as an occupational therapy assistant ~~shall~~ must pass an examination as provided for in section ~~2280~~ 2280-A.

6. **Licensure.** An applicant may be licensed as an occupational therapist if ~~he~~ the applicant has practiced as an occupational therapy assistant for 4 years, has completed the level II fieldwork requirements of subsection 4, paragraph A, for an occupational therapist before January 1, 1988, and has passed the examination for occupational therapists.

7. **Certification.** An applicant must submit a verification of certification form from NBCOT. The form must be completed and signed by NBCOT. An applicant applying within 3 months of having taken the certification examination who has the examination scores sent directly to the board is exempt from this requirement.

8. **Fee.** An applicant must pay an application fee and license fee.

**Sec. 7. 32 MRSA §2280**, as amended by PL 1991, c. 509, §14, is repealed.

**Sec. 8. 32 MRSA §2280-A** is enacted to read:

**§2280-A. National examination for licensure of occupational therapists and occupational therapy assistants**

The certification examination of NBCOT for the occupational therapist or occupational therapy assistant satisfies examination requirements of the board.

The certification examination for the occupational therapy assistant may be waived for any person who was certified as an occupational therapy assistant by the American Occupational Therapy Association prior to June 1977.

**Sec. 9. 32 MRSA §2281**, as amended by PL 1991, c. 509, §15, is further amended to read:

**§2281. Waiver of requirements for licensure**

The board shall grant a license to any person who, prior to July 25, 1984, ~~has~~ successfully completed an examination administered by the Psychological Corporation under contract with the American Occupational Therapy Certification Board if that person meets the requirements of section 2279, subsections 1, ~~2~~, 2-A and ~~3 and 4~~.

**Sec. 10. 32 MRSA §2283, sub-§1**, as enacted by PL 1983, c. 746, §2, is amended to read:

1. **Biennial renewal.** Any license issued under this chapter ~~shall be~~ is subject to biennial renewal and ~~shall expire~~ expires upon the stated expiration date, unless renewed in the manner prescribed by the rules of the board, ~~upon the~~ including payment of a renewal fee. Licenses may be ~~renewed~~ reinstated up to 90 days after the date of expiration upon payment of a late fee of \$10 in addition to the renewal fee. The 90-day period is for expediting the reinstatement process only. It does not extend the licensure period. Any person who submits an application for ~~renewal~~ reinstatement more than 90 days after the license ~~renewal~~ expiration date ~~shall be~~ 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 that ~~renewal~~ reinstatement application is made within 2 years from the date of that expiration.

**Sec. 11. 32 MRSA §2284**, as enacted by PL 1983, c. 746, §2, is repealed and the following enacted in its place:

**§2284. Foreign-trained applicants**

Foreign-trained applicants are subject to the provisions of this section.

1. **Approval.** Applicants must receive approval for their educational programs, supervised fieldwork and English language proficiency, based on standards set by NBCOT.

2. Character references. Applicants must submit 2 completed character reference forms acceptable to the board.

3. Examination. Applicants for licensure as occupational therapists or occupational therapy assistants must pass an examination as provided for in section 2280-A.

4. Certification. Applicants, except those applying within 3 months of having taken the certification examination who have their examination scores sent directly to the board, must submit a verification of certification form, provided by either the board or NBCOT. All forms must be completed and signed by NBCOT.

5. Fee. Applicants must pay application and license fees according to this chapter.

6. Temporary license. Foreign-trained applicants must receive approval to sit for the examination from NBCOT in order to be eligible for a temporary license.

**Sec. 13.** 32 MRSA §2285, sub-§2, as enacted by PL 1983, c. 746, §2, is amended to read:

**2. Disposal of 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 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. All fees are nonrefundable.

**Sec. 14.** 32 MRSA §2286, sub-§2, ¶B, as enacted by PL 1983, c. 746, §2, is amended to read:

B. Unprofessional conduct. A licensee shall be deemed to have has engaged in unprofessional conduct if he the licensee violates any standard of professional behavior which has been established in the practice for which the licensee is licensed as defined by the Occupational Therapy Code of Ethics, as adopted by AOTA;

See title page for effective date.

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**CHAPTER 295**

**H.P. 285 - L.D. 349**

**An Act to Modify the  
Prequalification Laws to Allow the  
Disqualification of Contractors for a  
Time Not to Exceed One Year**

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

**Sec. 1.** 5 MRSA §1747, as amended by PL 1993, c. 324, §1, is further amended to read:

**§1747. Questionnaire as prebid qualification**

The public official may require, from any person a firm proposing to bid on public work duly advertised, a standard form of questionnaire and financial statement, containing a complete statement of the person's financial ability and experience in performing public work, qualification statement and a letter from a licensed bonding company confirming that the firm has the financial capacity to perform the work before furnishing that person with plans and specifications for the proposed public work advertised.

The Director of the Bureau of Public Improvements General Services, after consultation with the appropriate department head or superintendent of schools, may refuse to release plans and specifications to a contractor for the purpose of bidding on a project:

**1. Untimely completion.** If, in the opinion of the director, there is evidence the contractor has not completed in a timely manner a prior construction project or projects and the resulting noncompletion clearly reflects disregard for the completion date and has created a hardship for the owner;

**2. Incomplete work.** If, in the opinion of the director, that there is evidence the contractor has a history of inability to complete similar work;

**3. Insufficient resources.** If, in the opinion of the director, there is evidence the contractor does not have sufficient resources to successfully complete the work; or

**4. Misconduct.** If the contractor has been convicted of collusion or fraud or any other civil or criminal violation relating to construction projects.

If a contractor is disqualified for any of the reasons stated in subsection 1, 2 or 4, the director may disallow the contractor from bidding on any similar public improvements for a period not to exceed one year.

See title page for effective date.

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**CHAPTER 296**

**H.P. 1111 - L.D. 1554**

**An Act to Eliminate Inconsistencies  
and Unnecessary Duplication  
Regarding the Training and  
Certification of Individuals Who  
Enforce Land Use Regulations**