

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

SECOND REGULAR SESSION
January 7, 1998 to March 31, 1998

SECOND SPECIAL SESSION
April 1, 1998 to April 9, 1998

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 1998

SECOND SPECIAL SESSION
NON-EMERGENCY LAWS IS
JULY 9, 1998

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
1997

taken, the final written decision relating to that action is no longer confidential after the decision is completed if it imposes or upholds discipline. The decision must state the conduct or other facts on the basis of which disciplinary action is being imposed and the conclusions of the acting authority as to the reasons for that action. If an arbitrator completely overturns or removes disciplinary action from an employee personnel file, the final written decision is public except that the employee's name must be deleted from the final written decision and kept confidential. If the employee whose name was deleted from the final written decision discloses that the employee is the person who is the subject of the final written decision, the entire final written report, with regard to that employee, is public.

For purposes of this subparagraph, "final written decision" means:

- (a) The final written administrative decision that is not appealed pursuant to a grievance arbitration procedure; or
- (b) If the final written administrative decision is appealed to arbitration, the final written decision of a neutral arbitrator.

A final written administrative decision that is appealed to arbitration is no longer confidential 120 days after a written request for the decision is made to the employer if the final written decision of the neutral arbitrator is not issued and released before the expiration of the 120 days; and

Sec. 4. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1998-99

ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF

State Mandates

All Other	\$100
Appropriates funds for 90% of the additional local costs associated with redacting employees' names from certain	

files. The Commissioner of Administrative and Financial Services shall distribute these funds pursuant to the Maine Revised Statutes, Title 30-A, section 5685. Amounts not required to fund 90% of the local costs associated with this Act must lapse to the General Fund.

See title page for effective date.

CHAPTER 771

S.P. 727 - L.D. 1969

An Act to Protect Students of Barbering, Cosmetology and Other Proprietary Schools

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

Sec. 1. 20-A MRSA §9502, sub-§§1 and 2, as amended by PL 1997, c. 266, §12, are further amended to read:

1. Application requirements; licensing; bonding and revocation of license. The application for a license required by this chapter must be made on forms furnished by the commissioner and be accompanied by a fee of \$100 and a surety bond ~~in the penal sum of \$10,000.~~ For applicants that participate in state or federal financial aid programs, except the Federal Direct Student Loan Program under the federal Higher Education Act of 1965, 20 United States Code, Section 1087a et seq., the bond must be in favor of the Finance Authority of Maine. For all other applicants, the bond must be in favor of the department. The amount of the bond for a new applicant is \$20,000. For renewal applicants, the amount of the bond must be equal to the greater of 10% of the applicant's gross receipts from tuition in the 12 months prior to the application for renewal or \$20,000.

A. A license is valid for the calendar year in which it is issued.

B. The bond must be continuous and must provide indemnification to any student suffering loss as a result of any fraud ~~or~~ misrepresentation, violation of this chapter or rules adopted under this chapter or breach of contract.

The bond must provide for written notification by the surety to the commissioner in the event of cancellation. Cancellation of the bond by the

surety, or of payment under the bond by the surety to the department or the Finance Authority of Maine, results in the revocation of the license. The bond must specifically provide that proceeds are available to pay tuition refunds to students or to student loan lenders on behalf of students eligible for those refunds pursuant to the policies of the school or state or federal law, rule or regulation.

C. If one or more students notify the department or the Finance Authority of Maine of a claim the student has against the school for fraud, misrepresentation, breach of contract or refund due, or that the school has violated the provisions of this chapter or applicable rules, or if any such event is discovered by the department or the Finance Authority of Maine from other sources and the holder of the bond has reason to believe the claim is valid, the holder may make a claim against the bond on behalf of the student or students affected, or on behalf of the department. The department and the Finance Authority of Maine have the concurrent right at any time to review the school's operations and all its records to determine if the school is in compliance with this chapter and rules adopted under this chapter, or to determine if any claim of a student against the school is valid.

2. Renewal fee and requirements. A fee of \$50 is charged for the renewal of a license. Each submission for a license renewal must include the school's most recent financial audit conducted by a certified public accountant unaffiliated with the school. When a school does not participate in federal or state financial aid programs, internally prepared financial statements signed by the applicant are acceptable. Every renewal application must include a bond in the required amount. The commissioner shall provide copies of the audit or financial statements and, when the bond is not in favor of the department, the original bond to the Finance Authority of Maine and may provide financial information regarding the school to other state agencies with an interest in the operation of the school. When a school applies for renewal of a license, the school must certify that:

A. The school has included information in all school brochures and handbooks provided to students and has posted information in a location in the school frequented by students advising students of their rights to receive refunds and where to direct any complaints the students have concerning their education; and

B. The school is in compliance with all applicable federal and state laws and regulations.

Sec. 2. 20-A MRSA §9502, sub-§4 is enacted to read:

4. Definitions. As used in this section, the term "bond" means a bond, letter of credit or cash equivalent acceptable to the holder, in its discretion.

Sec. 3. 20-A MRSA §9502-A is enacted to read:

§9502-A. Complaints; license; refusal to renew; suspension; revocation

The commissioner may investigate complaints involving a school including any allegation of noncompliance with or violation of this chapter and applicable rules. The commissioner shall promptly notify the Finance Authority of Maine of any complaints involving student financial assistance. After a hearing in conformance with Title 5, chapter 375, subchapter IV, the commissioner may amend or modify a license and may suspend or refuse to renew a license as provided in Title 5, section 10004.

The Administrative Court may suspend or revoke the license of any person, partnership, association or corporation in violation of this chapter or any lawful order or rule issued by the department.

Sec. 4. 32 MRSA §9503, sub-§2, as enacted by PL 1983, c. 841, §4, is amended to read:

2. Enforcement actions. 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. A violation of the provisions of this chapter or any rules adopted under this chapter is prima facie evidence of a violation of the Maine Unfair Trade Practices Act. Responsible owners, officers and employees of licensees are personally liable to any person harmed by intentional violations of this chapter or applicable rules, including violations of rules regarding refunds, for the amount of damage caused by the violation.

Sec. 5. 20-A MRSA §9504, as amended by PL 1983, c. 841, §5, is further amended to read:

§9504. Rules

The commissioner ~~may~~ shall adopt rules for the administration and enforcement of this chapter. The rules ~~may~~ must establish requirements relating to advertising, records and ~~recordkeeping~~ record keeping, health and sanitation, safety, personnel, tuition, fees, contracts and other matters ~~which may~~ that protect the public and consumer interests and must establish requirements for payment of refunds, and notices and information to be provided to

students. Rules adopted pursuant to this chapter are routine technical rules pursuant to Title 5, chapter 375, subchapter II A.

Sec. 6. 20-A MRSA §9508 is enacted to read:

§9508. Actions on behalf of students

In addition to other powers or remedies under this chapter, the State may bring one or more actions in any state or federal court having jurisdiction on behalf of students harmed by fraud, misrepresentation, violation of this chapter or applicable rules, breach of contract or failure to pay refunds of tuition due from the school or its owners or employees. The Finance Authority of Maine has concurrent power to bring one or more actions in any state or federal court having jurisdiction on behalf of students harmed by failure to pay refunds of tuition due from the school or its owners or employees.

Sec. 7. 32 MRSA §14211, as amended by PL 1995, c. 397, §120, is repealed.

Sec. 8. 32 MRSA §14211-A is enacted to read:

§14211-A. Board

1. Membership. The Board of Barbering and Cosmetology, as established by Title 5, section 12004-A, subsection 6, consists of 10 members including the Commissioner of Education or the commissioner's designee who is an ex officio and a nonvoting member. The Governor shall appoint the remaining 9 members, of whom 2 must be representatives of the public; 3 must be licensed and practicing cosmetologists; 2 must be licensed and practicing barbers; one must be a licensed instructor having no affiliation with any school currently licensed in the State; and one must be the owner of a licensed barbering or cosmetology school.

2. Term. Appointments are for 3-year terms and must comply with section 60. A member may be removed by the Governor for cause.

3. Qualifications. Each member of the board must be a citizen of the United States and a resident of this State. The cosmetologist and barber members must be currently licensed by the State and have engaged in active practice of their profession for at least 4 years immediately prior to appointment. The cosmetologist and barber members must hold valid licenses and must be actively engaged in the practice of cosmetology or barbering while serving on the board.

4. Meetings; quorum. The board shall meet at least once a year to conduct its business. Additional meetings may be held as necessary to conduct the

business of the board and may be convened at the call of the chair or a majority of the board members. A majority of the board constitutes a quorum for all purposes.

5. Conflict of interest. The licensed barbering or cosmetology school owner member may not participate in any licensing or disciplinary proceeding before the board that involves the member's school or any former or current student of the member's school.

Sec. 9. 32 MRSA §14212, sub-§11 is enacted to read:

11. Inspections. The board or its agents or assistants shall inspect each establishment for compliance with the applicable requirements of this subchapter and the applicable rules of the board adopted pursuant to this subchapter. Each establishment must be inspected at least once a year for compliance with the applicable laws and rules relating to the public health and safety and the conduct and operation of establishments.

Sec. 10. 32 MRSA §14245, sub-§3, as enacted by PL 1997, c. 266, §18, is repealed.

Sec. 11. 32 MRSA §14246, as enacted by PL 1997, c. 266, §18, is amended to read:

§14246. License application form; fee; bond

1. Application requirements; licensing; bonding and revocation of license. The application for a license required by this subchapter must be made on forms furnished by the board and be accompanied by an application fee not to exceed \$100 and a surety bond ~~in the penal sum of \$10,000~~. For applicants that participate in state or federal financial aid programs, except the Federal Direct Student Loan Program under the federal Higher Education Act of 1965, 20 United States Code, Section 1087a et seq., the bond must be in favor of the Finance Authority of Maine. For all other applicants, the bond must be in favor of the board. The amount of the bond for a new applicant is \$20,000. For renewal applicants, the amount of the bond must be equal to the greater of 10% of the applicant's gross receipts from tuition in the 12 months prior to the application for renewal or \$20,000.

A. A license is valid for the calendar year in which it is issued.

B. The bond must be continuous and must provide indemnification to any student suffering loss as a result of any fraud or misrepresentation, violation of this subchapter or rules adopted under this subchapter or breach of contract. The bond must provide for written notification by the surety to the board in the event of cancellation. Cancellation of the bond by the surety, or pay-

ment under the bond by the surety to the board or the Finance Authority of Maine, results in the revocation of the license. The bond must also specifically provide that proceeds are available to pay tuition refunds to students or to student loan lenders on behalf of students eligible for those refunds pursuant to the policies of the school or state or federal law, rule or regulation.

C. If one or more students notify the board or the Finance Authority of Maine of a claim the student has against the school for fraud, misrepresentation, breach of contract or refund due, or that the school has violated the provisions of this subchapter or applicable rules, or if any such event is discovered by the board or the Finance Authority of Maine from other sources and the holder of the bond has reason to believe the claim is valid, the holder may make a claim against the bond on behalf of the student or students affected, or on behalf of the board. The board and the Finance Authority of Maine have the concurrent right at any time to review the school's operations and all its records to determine if the school is in compliance with this subchapter and rules adopted under this subchapter, or to determine if any claim of a student against the school is valid.

2. License fee; renewal fee; renewal requirements. A fee not to exceed \$500 is charged for the initial license and for the annual renewal of a license. Each submission for a license renewal must include the school's most recent financial audit conducted by a certified public accountant unaffiliated with the school. When a school does not participate in federal or state financial aid programs, internally prepared financial statements signed by the applicant are acceptable. Every renewal application must include a bond in the required amount. The board shall provide copies of the audit or financial statements and, in cases in which the bond is not in favor of the board, the original bond to the Finance Authority of Maine and may provide financial information regarding the school to other state agencies with an interest in the operation of the school. When a school applies for renewal of a license the school must certify that:

A. The school has included information in all school brochures and handbooks provided to students, and has posted information in a location in the school frequented by students advising students of their rights to receive refunds and where to direct any complaints the students have concerning their education; and

B. The school is in compliance with all applicable federal and state laws and regulations.

3. Definitions. As used in this section, the term "bond" means a bond, letter of credit or cash equivalent, acceptable to the holder, in its discretion.

Sec. 12. 32 MRSA §14247, as enacted by PL 1997, c. 266, §18, is amended to read:

§14247. Rules

The board shall adopt rules for the licensing of persons, partnerships, associations or corporations to maintain and operate schools of barbering and schools of cosmetology. The rules must include standards relating to educational programs, instructor qualifications, records and ~~recordkeeping~~ record keeping, health and sanitation, safety and physical facilities, payment of refunds, and notices and information to be provided to students. Rules adopted pursuant to this ~~subchapter~~ chapter are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

Sec. 13. 32 MRSA §14249, first ¶, as enacted by PL 1997, c. 266, §18, is amended to read:

The board may investigate complaints involving a school including any allegation of noncompliance with or violation of this subchapter and applicable rules. The board shall promptly notify the Finance Authority of Maine of any complaints involving student financial assistance. After a hearing in conformance with Title 5, chapter 375, subchapter IV, the board may amend or modify any license and may suspend or refuse to renew a license as provided in Title 5, section 10004.

Sec. 14. 32 MRSA §§14251 and 14252 are enacted to read:

§14251. Enforcement actions

The State may bring an action in Superior Court to enjoin any person from violating this subchapter or rules adopted under this subchapter regardless of whether proceedings have been or may be instituted in the Administrative Court or whether criminal proceedings have been or may be instituted. A violation of this subchapter or any rule adopted under this subchapter is prima facie evidence of a violation of the Maine Unfair Trade Practices Act. Responsible owners, officers and employees of licensees are personally liable to any person harmed by intentional violations of this subchapter or applicable rules, including violations of rules regarding the payment of refunds, for the amount of damage caused by the violation.

§14252. Actions on behalf of students

In addition to other powers or remedies under this subchapter, the State may bring one or more actions in any state or federal court having jurisdiction

on behalf of students harmed by fraud, misrepresentation, violation of this subchapter or applicable rules. The Finance Authority of Maine has concurrent power to bring one or more actions in any state or federal court having jurisdiction on behalf of students harmed by failure to pay refunds of tuition due from the school or its owners or employees.

See title page for effective date.

CHAPTER 772

H.P. 1488 - L.D. 2087

An Act to Clarify the Tax-exempt Status of the Maine School of Science and Mathematics

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

Sec. 1. 20-A MRSA §8205, sub-§7, as enacted by PL 1993, c. 706, Pt. A, §4, is amended to read:

7. Property management. To lease and to acquire by purchase any property, lands, buildings, structures, facilities or equipment and make improvements to facilities necessary to fulfill the purposes of this chapter. Any lease or lease-purchase agreement must have a term not to exceed 10 years and must be subject to annual appropriation of funds. The community of Limestone retains ownership of the Limestone Elementary School and the Limestone Junior Senior High School and shares those facilities with the school;

Sec. 2. 20-A MRSA §8207, as amended by PL 1997, c. 562, Pt. E, §1, is further amended to read:

§8207. Financing authority

The board of trustees may borrow funds, issue bonds and negotiate notes and other evidences of indebtedness or obligations of the school for renovation and construction purposes to pay for costs as defined in Title 22, section 2053, subsection 3 and may issue temporary notes and renewal notes to pay for those costs. Bonds, notes or other evidences of indebtedness or obligations of the school are legal obligations of the school on behalf of the State and are payable solely from its the school's revenues and other sources of funds, including funds obtained pursuant to Title 22, section 2053, subsection 4-B, paragraph B, and these borrowings by the school do not constitute a debt debts or liability liabilities of, and those bonds and notes are not includable in any debt limitation of the State or any municipality or political subdivision of the State. The board of trustees has the discretion to fix the date, maturities, denomination, interest rate,

place of payment, form and other details of the bonds or notes of the school. Unless otherwise provided in the vote authorizing their issuance, bonds or notes of the school are signed by the treasurer and countersigned by the chair of the board of trustees. The aggregate principal amount of outstanding bonds, notes or other evidences of indebtedness of the school may not exceed \$3,000,000 at any one time, excluding temporary notes and renewal notes. The board of trustees may pledge or assign its revenues, including any funds that have been or may be appropriated to the school by the Town of Limestone, and the proceeds of those revenues and its other property as security toward its bonds, notes, other evidences of indebtedness or other obligations of the school. The proceeds of bonds, notes or other evidences of indebtedness may be invested in accordance with Title 30-A, sections 5706 and 5712. Bonds, notes and other evidences of indebtedness issued under this section are not debts of the State, nor a pledge of the credit of the State, but are payable solely from the funds of the school. The board of trustees may also borrow funds in anticipation of revenues for current operating expenses for a term not exceeding 13 months. Indebtedness incurred and evidences of indebtedness issued under this chapter are deemed to constitute a proper public purpose and all income derived is exempt from taxation in the State. The net earnings of the school may not inure to the benefit of any private person. If the school is dissolved, the distribution of all property owned by the school must be determined by the Legislature in accordance with this chapter and may not inure to the benefit of any private person.

See title page for effective date.

CHAPTER 773

H.P. 1503 - L.D. 2125

An Act to Improve Public Sector Labor Relations

Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, two thirds of all of the members elected to each House have determined it necessary to enact this measure.

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

Sec. 1. 26 MRSA §964-A is enacted to read: