

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND TWENTIETH LEGISLATURE
FIRST REGULAR SESSION
December 6, 2000 to June 22, 2001

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 21, 2001

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
2001

The promoter or promoters of all boxing or kick-boxing contests or exhibitions and all professional wrestling matches, shows or exhibitions held under this chapter shall pay to the Treasurer of State, for credit to the Athletic Commission Fund, a tax of ~~4.5%~~ 5% of the gross receipts from the contest or exhibition. This section applies to all boxing, kick-boxing and wrestling contests or exhibitions ~~which~~ that are shown over closed circuit television.

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

Effective May 15, 2001.

CHAPTER 167

H.P. 385 - L.D. 487

An Act to Allow the Agencies of the Department of Professional and Financial Regulation to Revoke Professional and Occupational Licenses

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

Sec. 1. 10 MRSA §8003, sub-§5, as amended by PL 1999, c. 547, Pt. B, §78 and affected by §80 and amended by c. 687, Pt. C, §7, is further amended to read:

5. Authority of bureaus, offices, boards or commissions. In addition to authority otherwise conferred, unless expressly precluded by language of denial in its own governing law, each bureau, office, licensing board and commission within or affiliated with the department may take one or more of the following actions, except that this subsection does not apply to the Bureau of Banking.

A-1. For each violation of applicable laws, rules or conditions of licensure or registration, the bureau, office, board or commission may take one or more of the following actions:

- (1) Issue warnings, censures or reprimands to a licensee or registrant. Each warning, censure and reprimand issued must be based upon violations of different applicable laws, rules or conditions of licensure or must be based upon separate instances of actionable conduct or activity;
- (2) Suspend a license or registration for up to 90 days for each violation of applicable laws, rules and conditions of licensure or registration or for instance of actionable

conduct or activity. Suspensions may be set to run concurrently or consecutively ~~and, in total, may not exceed one year.~~ Execution of all or any portion of a term of suspension may be stayed pending successful completion of conditions of probation, although the suspension remains part of the licensee's or registrant's record;

(2-A) Revoke a license or registration;

(3) Impose civil penalties of up to \$1,500 for each violation of applicable laws, rules and conditions of licensure or registration or for instances of actionable conduct or activity; and

(4) Impose conditions of probation upon an applicant, licensee or registrant. Probation may run for such time period as the bureau, office, board or commission determines appropriate. Probation may include conditions such as: additional continuing education; medical, psychiatric or mental health consultations or evaluations; mandatory professional or occupational supervision of the applicant, licensee or registrant; and other conditions as the bureau, office, board or commission determines appropriate. Costs incurred in the performance of terms of probation are borne by the applicant, licensee or registrant. Failure to comply with the conditions of probation is a ground for disciplinary action against a licensee or registrant.

B. The bureau, office, board or commission may execute a consent agreement that resolves a complaint or investigation without further proceedings. Consent agreements may be entered into only with the consent of: the applicant, licensee or registrant; the bureau, office, board or commission; and the Department of the Attorney General. Any remedy, penalty or fine that is otherwise available by law, even if only in the jurisdiction of the ~~District~~ Superior Court, may be achieved by consent agreement, including long-term suspension and permanent revocation of a professional or occupational license or registration. A consent agreement is not subject to review or appeal, and may be modified only by a writing executed by all parties to the original consent agreement. A consent agreement is enforceable by an action in Superior Court.

C. The bureau, office, board or commission may:

- (1) Require all applicants for license or registration renewal to have responded un-

der oath to all inquiries set forth on renewal forms;

(2) Require applicants for license or registration renewal to present proof of satisfactory completion of continuing professional or occupational education in accordance with each bureau's, office's, board's or commission's rules. Failure to comply with the continuing education rules may, in the bureau's, office's, board's or commission's discretion, result in a decision to deny license or registration renewal or may result in a decision to enter into a consent agreement and probation setting forth terms and conditions to correct the licensee's or registrant's failure to complete continuing education. Terms and conditions of a consent agreement may include requiring completion of increased hours of continuing education, civil penalties, suspension and other terms as the bureau, office, board, commission, the licensee or registrant and the Department of the Attorney General determine appropriate. Notwithstanding any contrary provision set forth in a bureau's, office's, board's or commission's governing law, continuing education requirements may coincide with the license or registration renewal period;

(3) Refuse to renew a license or registration when the bureau, office, board or commission finds a licensee or registrant to be in noncompliance with a bureau, office, board or commission order or consent agreement;

(4) Allow licensees or registrants to hold inactive status licenses or registrations in accordance with each bureau's, office's, board's or commission's rules. The fee for an inactive license or registration may not exceed the statutory fee cap established for the bureau's, office's, board's or commission's license or registration renewal set forth in its governing law; or

(5) Delegate to staff the authority to review and approve applications for licensure pursuant to procedures and criteria established by rule. Rules developed pursuant to this subparagraph are routine technical rules as described in Title 5, chapter 375, subchapter II-A.

D. The bureau, office, board or commission may require surrender of licenses and registrations. In order for a licensee's or registrant's surrender of a license or registration to be effective, a surrender

must first be accepted by vote of the bureau, office, board or commission. Bureaus, offices, boards and commissions may refuse to accept surrender of licenses and registrations if the licensee or registrant is under investigation or is the subject of a pending complaint or proceeding, unless a consent agreement is first entered into pursuant to this chapter.

E. The bureau, office, board or commission may issue letters of guidance or concern to a licensee or registrant. Letters of guidance or concern may be used to educate, reinforce knowledge regarding legal or professional obligations and express concern over action or inaction by the licensee or registrant that does not rise to the level of misconduct sufficient to merit disciplinary action. The issuance of a letter of guidance or concern is not a formal proceeding and does not constitute an adverse disciplinary action of any form. Notwithstanding any other provision of law, letters of guidance or concern are not confidential. The bureau, office, board or commission may place letters of guidance or concern, together with any underlying complaint, report and investigation materials, in a licensee's or registrant's file for a specified amount of time, not to exceed 10 years. Any letters, complaints and materials placed on file may be accessed and considered by the bureau, office, board or commission in any subsequent action commenced against the licensee or registrant within the specified time frame. Complaints, reports and investigation materials placed on file are only confidential to the extent that confidentiality is required pursuant to Title 24, chapter 21, the Maine Health Security Act.

F. A bureau, office, board or commission may establish, by rule, procedures for licensees in another state to be licensed in this State by written agreement with another state, by entering into written licensing compacts with other states or by any other method of license recognition considered appropriate that ensures the health, safety and welfare of the public. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

The jurisdiction to suspend and revoke occupational and professional licenses conferred by this subsection is concurrent with that of the District Court. Civil penalties must be paid to the Treasurer of State.

Any nonconsensual disciplinary action taken under authority of this subsection may be imposed only after a hearing conforming to the requirements of Title 5, chapter 375, subchapter IV, and, except for revocation actions, is subject to judicial review exclusively in the District Superior Court in accordance with Title 5, chapter 375, subchapter VII, ~~substituting the term~~

"District Court" for "Superior Court," notwithstanding any other provision of law.

Any nonconsensual revocation of an occupational or professional license taken under authority of this subsection is subject to, upon appeal within the time frames provided in Title 5, section 11002, subsection 3, de novo judicial review exclusively in District Court. Rules adopted to govern judicial appeals from agency action apply to cases brought under this section.

See title page for effective date.

CHAPTER 168

S.P. 227 - L.D. 792

An Act to Implement the Maine Agricultural Internship and Training Program

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

Sec. 1. 7 MRSA §222, sub-§3, as enacted by PL 1987, c. 520, is amended to read:

3. Assistance. Provide assistance in matching retiring farmers with persons desiring to enter farming and recruit and place interns with farmer-supervisors; ~~and~~

Sec. 2. 7 MRSA §222, sub-§4, as amended by PL 1989, c. 700, Pt. A, §32, is further amended to read:

4. Cooperation. Cooperate with appropriate local, state and federal agencies and institutions and with farm organizations and interested individuals, including the Department of Education, the Department of Labor, the University of Maine and the Cooperative Extension Service, in carrying out this chapter;

Sec. 3. 7 MRSA §222, sub-§§5 and 6 are enacted to read:

5. Staff support. Designate an employee of the department to oversee the Maine Agricultural and Internship Training Program; and

6. Report. Report to the joint standing committee of the Legislature having jurisdiction over agricultural matters no later than March 1st of each odd-numbered year on activities relating to the implementation of this chapter.

Sec. 4. Commissioner's report. The Commissioner of Agriculture, Food and Rural Resources shall report to the Joint Standing Committee on

Agriculture, Conservation and Forestry no later than December 1, 2001 on the implementation of a program to identify individuals interested in farm apprenticeships or in purchasing a farm and to establish a network of information to facilitate farm transfers and any other initiatives relating to the responsibilities of the commissioner under the Maine Revised Statutes, Title 7, chapter 8-B.

See title page for effective date.

CHAPTER 169

H.P. 378 - L.D. 480

An Act Concerning the State Board of Funeral Service

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

Sec. 1. 32 MRSA §1400, sub-§3, as enacted by PL 1967, c. 253, §1 and amended by PL 1997, c. 210, §40, is further amended to read:

3. Funeral establishment. "Funeral establishment" means every place or ~~premise~~ premises devoted to or used in the care and preparation for the funeral and burial of human remains or maintained for the convenience of the bereaved for viewing or other services in connection with the human remains or as the office or place for carrying on the profession of funeral service.

Sec. 2. 32 MRSA §1400, sub-§5, as enacted by PL 1967, c. 253, §1 and amended by PL 1997, c. 210, §40, is further amended to read:

5. Practice of funeral service. "Practice of funeral service" ~~shall mean~~ means the engagement of a person engaged in the care or disposition of the human remains or in the practice of disinfecting and preparing by embalming or otherwise the human remains for the funeral service, transportation; of human remains to the place of burial or cremation, or the practice of helping to meet the emotions and disposition of the bereaved, or in the practice of funeral directing or embalming as presently known, whether under these titles or designations or otherwise. It shall mean a person who makes "Practice of funeral service" also means making arrangements for funeral services or who sells selling funeral supplies to the public or who makes making financial arrangements for the rendering of such services or the sale of such supplies. "Practice of funeral service" does not mean the ownership or operation of a cemetery, crematorium, mausoleum or columbarium or any other facility used for burial of human remains. "Practice of funeral service" does not include the transportation of human remains by an authorized person.