

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

Sec. 49. 24-A MRSA §2013, sub-§1, ¶¶A and B, as amended by PL 1997, c. 592, §59, are further amended to read:

A. If the producer fails to remit the tax as required by section ~~2016~~ 2018;

B. If ~~the a~~ producer ~~fails to~~ who is required to maintain an office in this State fails to do so, or to keep the records, or to allow the superintendent to examine those records as required by this law, or if the producer removes those records from the State when prohibited;

Sec. 50. 24-A MRSA §2013, sub-§1, ¶D, as amended by PL 1985, c. 564, §3, is further amended to read:

D. For any other applicable cause for which a ~~general lines agent's~~ producer's license may be suspended or revoked; or

See title page for effective date.

CHAPTER 260

H.P. 1278 - L.D. 1738

An Act to Clarify Certain Professional and Occupational Licensing Requirements

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

PART A

Sec. A-1. 10 MRSA §9002, sub-§6, as amended by PL 1979, c. 436, is repealed and the following enacted in its place:

6. Installation. "Installation" means:

A. The affixing of manufactured housing on foundations or supports at a building site; and

B. The assembly and fastening of structural components of manufactured housing, including the completed roof system, as specified by the manufacturer's installation instructions and in accordance with the rules of the board.

For manufactured housing as defined in subsection 7, paragraphs A and C, "installation" also includes the connection to existing electrical, oil, gas, water, sewage and similar systems that are necessary for the use of the manufactured housing for dwelling purposes.

PART B

Sec. B-1. 32 MRSA §1071, first ¶, as amended by PL 1999, c. 124, §1, is further amended to read:

~~Until January 1, 2001, the~~ The Board of Dental Examiners, established by Title 5, section 12004-A, subsection 10, and in this chapter called the "board," consists of 8 members, appointed by the Governor as follows: five members of the dental profession, one dental hygienist, one dentist and one representative of the public. ~~After January 1, 2001, the board consists of 7 members, appointed by the Governor as follows: 5 members of the dental profession, one dental hygienist and one representative of the public.~~

Sec. B-2. 32 MRSA §1071, sub-§3-A is enacted to read:

3-A. Denturist. The denturist must be qualified pursuant to subchapter VI, must be a legal resident of the State and for appointments made after January 1, 2006, the denturist must have practiced in the State for at least 6 years immediately preceding appointment. The denturist member of the board is a full-voting member of the board. The term of the denturist is 5 years. A denturist is not eligible to serve as a member of the board while employed by a dentist who is a member of the board.

Sec. B-3. 32 MRSA §1085, as amended by PL 1995, c. 590, §1, is further amended to read:

§1085. Endorsement; fees

The board is authorized, at its discretion, without the examination as provided, to issue a license to an applicant who furnishes proof, satisfactory to the board, that the applicant has been licensed to practice dentistry in another state after full compliance with the requirements of its dental laws. If an applicant is licensed to practice dentistry in another state, that applicant's professional education may not be less than is required in this State and the applicant must have been at least ~~5~~ 3 years in actual practice in the state in which the license was granted. Applicants for licensure by endorsement who meet the requirements of this section must be interviewed in person by the board or members of the board, prior to being issued a license. Every license of this type issued by the board must state upon its face the grounds upon which it is issued and the applicant may be required to furnish proof upon affidavit. The fee for the license is determined by the board, but may not be more than \$300.

Sec. B-4. 32 MRSA §1100-E, sub-§4, as amended by PL 1995, c. 590, §7, is further amended to read:

4. Endorsement. The board, at its discretion, without examination, may issue a license to an applicant to practice as a dentist who furnishes proof satisfactory to the board that the dentist has been licensed to practice and has actively practiced for a period of ~~5~~ 3 years in another state or Canadian province after full compliance with the requirements of its dental laws, if the licensure requirements are, in all essentials, at least equivalent to those of this State. The board may require letters of reference about the dentist. Applicants for licensure by endorsement who meet the requirements of this section must be interviewed in person by the board, or members of the board, prior to being issued a license. Every license so given must state upon its face that it was granted on the basis of endorsement. The fee for the license may not exceed \$100.

PART C

Sec. C-1. 32 MRSA §1658-B, as repealed and replaced by PL 1999, c. 386, Pt. G, §1, is repealed and the following enacted in its place:

§1658-B. Payment; trial period; medical return

1. Trial period. The dealer-licensee may require the purchaser to pay the full purchase price for the hearing aid or aids at the time of delivery.

A. On that date of delivery, a 30-day trial period begins. If within this trial period the purchaser notifies the dealer-licensee of the purchaser's wish to cancel the transaction, the dealer-licensee must make a full refund of the purchase price, less the reasonable price of the ear mold or molds and lab fees, at the time the purchaser returns the hearing aid or aids. The dealer-licensee must also return to the purchaser any hearing aids, devices, accessories and ear molds that the dealer-licensee has received from the purchaser.

B. No fewer than 20 or more than 35 days following the delivery of the hearing aid or aids to the purchaser, the dealer-licensee must contact the purchaser and provide, at no cost to the purchaser, any service, fitting or repair that may be necessary for the beneficial and comfortable use of the hearing aid. If any service, fitting or repair is performed, a new 30-day trial period commences as of the date of this service.

2. Return for medical reasons. The purchaser may cancel the transaction by submitting to the dealer-licensee within 60 calendar days from the date of delivery of the hearing aid or aids a written opinion from a physician or audiologist stating that the hearing aid or aids is not advisable for the purchaser. Upon receipt of the statement and return by the purchaser of the hearing aid or aids, the dealer-licensee shall make

a full refund of the purchase price, less the reasonable price of the ear mold or molds and lab fees. The dealer-licensee must also return to the purchaser any hearing aids, devices, accessories and ear molds that the dealer-licensee has received from the purchaser.

3. Violations. Any provision of a contract that limits or conditions in any way the rights guaranteed to purchasers by this section is against public policy and void. Any violation of the requirements of this section, in addition to being unethical conduct under section 1658-N, constitutes a violation of the Unfair Trade Practices Act, Title 5, chapter 10.

Sec. C-2. 32 MRSA §1658-C, sub-§4, ¶D, as amended by PL 1991, c. 509, §7, is further amended to read:

~~D. The notice must state that the purchaser may cancel the transaction if the purchaser consults an audiologist or a licensed physician who in writing states that the hearing aid is not advisable and in writing specifies the audiological or medical reason or both therefor the provisions of the 30-day trial period and 60-day medical return period as set out in section 1658-B. This notice must state that the purchaser may cancel only if the written opinion from the audiologist or physician is submitted to the seller within 60 calendar days from the date of purchase. If the purchaser cancels a transaction pursuant to this paragraph, the seller licensee shall within 60 days of the notice of the cancellation and the return by the purchaser of the hearing aid or aids refund to the purchaser the amount paid less 10% of the purchase price of one or more hearing aids and less the reasonable price of the ear mold or molds and lab fees.~~

PART D

Sec. D-1. 32 MRSA §2103, sub-§2, as amended by PL 1999, c. 386, Pt. H, §1, is further amended to read:

2. Students. The practice of nursing that is an integral part of a program by students enrolled in board-approved nursing education programs leading to initial licensure, and the practice of nursing by graduates of board-approved programs pending the results of the first licensing examination for which they are eligible following graduation, if they practice under on-site delegation and supervision of a registered professional nurse and only in the practice setting. The board may, by rule or by policy, define what constitutes a practice setting;

Sec. D-2. 32 MRSA §2105-A, sub-§1-A, as amended by PL 1999, c. 547, Pt. B, §62 and affected by §80, is further amended to read:

1-A. Disciplinary proceedings and sanctions.

The board shall investigate a complaint, on its own motion or upon receipt of a written complaint filed with the board, regarding noncompliance with or violation of this chapter or of rules adopted by the board. Investigation may include a hearing before the board to determine whether grounds exist for suspension, revocation or denial of a license, or as otherwise considered necessary to the fulfillment of its responsibilities under this chapter. The board may subpoena witnesses, records and documents, including records and documents maintained by a health care facility, in an investigation or hearing it conducts.

The board shall notify the licensee of the content of a complaint filed against the licensee as soon as possible, but not later than 60 days from receipt of this information. The licensee shall respond within 30 days. If the licensee's response to the complaint satisfies the board that the complaint does not merit further investigation or action, the matter may be dismissed, with notice of the dismissal to the complainant, if any.

If, in the opinion of the board, the factual basis of the complaint is or may be true, and it is of sufficient gravity to warrant further action, the board may request an informal conference with the licensee. The board shall provide the licensee with adequate notice of the conference and of the issues to be discussed. The conference must be conducted in executive session of the board, or its subcommittee, pursuant to Title 1, section 405, unless otherwise requested by the licensee. Statements made at the conference may not be introduced at a subsequent formal hearing unless all parties consent.

If the board or its subcommittee finds that the factual basis of the complaint is true and is of sufficient gravity to warrant further action, it may take any of the following actions it considers appropriate:

- A. Warn, censure or reprimand;
- B. With the consent of the licensee, enter into a consent agreement that fixes the period and terms of probation best adapted to protect the public health and safety and to rehabilitate or educate the licensee. A consent agreement may be used to terminate a complaint investigation, if entered into by the board, the licensee and the Attorney General's office;
- C. In consideration for acceptance of a voluntary surrender of the license, negotiate stipulations, including terms and conditions for reinstatement that ensure protection of the public health and safety and serve to rehabilitate or educate the licensee. These stipulations may be set forth only

in a consent agreement signed by the board, the licensee and the Attorney General's office;

D. If the board or its subcommittee concludes that modification or nonrenewal of the license is in order, hold an adjudicatory hearing in accordance with the provisions of Title 5, chapter 375, subchapter IV; or

E. If the board or its subcommittee concludes that suspension or revocation of the license is in order, file a complaint in the District Court in accordance with Title 4, chapter 5.

PART E

Sec. E-1. 32 MRSA §2351, first ¶, as amended by PL 1993, c. 659, Pt. A, §5, is further amended to read:

The Oil and Solid Fuel Board, as established by Title 5, section 12004-A, subsection 27, and in this chapter called the "board," consists of the Commissioner of Public Safety or a representative and 6 5 other members, called in this chapter the "appointive members," who are appointed by the Governor.

Sec. E-2. 32 MRSA §2351, 2nd ¶, as amended by PL 1999, c. 386, Pt. J, §10, is further amended to read:

Three of the appointive members must be oil burner technicians who are active in the trade. One of the members must have at least 5 years' experience and the other 2 members must have at least 10 years' experience as oil burner technicians. Nominees for appointment of the oil burner technician members may be recommended to the Governor by the Maine Oil Dealers Association. One of the appointive members must be a representative of the solid fuel burning industry; and one must be a representative of the public ~~and one must be a manufacturer, importer or wholesaler of equipment for burning oil and solid fuel, prefabricated fireplaces and chimneys or accessory equipment.~~

Sec. E-3. 32 MRSA §2401-B, sub-§1, ¶C, as enacted by PL 1999, c. 386, Pt. J, §14, is amended to read:

C. For a master solid fuel burner technician license, a person must present to the board satisfactory evidence of at least 2 years' licensed practical experience ~~as a journeyman oil burner technician~~ and related knowledge; a master oil burner technician's license issued under this chapter; or a bachelor's degree in engineering from an accredited university and satisfactory evidence of knowledge of solid fuel burning equipment. An out-of-state applicant must pre-

sent satisfactory evidence to the board of experience in installing, cleaning, servicing, altering and repairing solid fuel burning equipment.

PART F

Sec. F-1. 13 MRSA §705, as amended by PL 1997, c. 313, §1, is further amended to read:

§705. Corporate organization

An individual or group of individuals duly licensed or otherwise legally authorized to render the same professional service within this State may organize and become a shareholder or shareholders of a professional corporation under the corporation laws for the sole and specific purpose of rendering the same and specific professional service. Notwithstanding any other provisions of law, for the purposes of this chapter, osteopathic physicians licensed under Title 32, chapter 36 and physicians and surgeons licensed under Title 32, chapter 48 are considered to render the same professional service. Notwithstanding any other provision of law, for the purposes of this chapter, optometrists licensed under Title 32, chapter 34-A and ophthalmologists licensed under Title 32, chapter 36 or 48 may organize and become the sole shareholders of the same professional corporation under the corporation laws for the sole and specific purpose of rendering their respective professional services that are considered to be complementary to one another. Notwithstanding any other provision of law, nonlicensed individuals may organize with individuals who are licensed under Title 32, chapter 113, and may become shareholders of a firm licensed to practice public accountancy under Title 32, section 12252, provided that all of the requirements for licensure under Title 32, section 12252, subsection 3 are met by the firm.

Sec. F-2. 32 MRSA §12252, sub-§3, ¶A, as amended by PL 1999, c. 619, §2, is further amended to read:

A. An applicant for initial issuance or renewal of a permit to practice under this section shall show that a simple majority of the ownership of the firm, in terms of financial interests and voting rights of all partners, officers, shareholders, members or managers, belongs to holders of certificates who are licensed in a state and that all partners, officers, shareholders, members or managers whose principal place of business is in this State ~~and~~ or who perform professional services in this State hold valid individual permits issued by the board. ~~At least a simple majority of the ownership of a public accounting firm, in terms of financial interests and voting rights, must belong to holders of permits issued by the board.~~ Firms may include nonlicensee owners in accordance with paragraph B.

PART G

Sec. G-1. 32 MRSA §14228, sub-§3, as amended by PL 1999, c. 386, Pt. U, §3, is further amended to read:

3. Training. Has satisfactorily completed a course of instruction in aesthetics of 600 hours in not less than ~~5~~ 3 months in a school licensed by the board or has experience in the practice of aesthetics as a trainee of up to 1,000 hours distributed over a period of at least ~~7~~ 6 months. The board shall establish by rule the specific number of hours of course work required up to a maximum of 600 hours. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A; and

PART H

Sec. H-1. 32 MRSA §3269, sub-§15, as amended by PL 1997, c. 680, Pt. C, §2, is further amended to read:

15. Adequacy of budget, fees and staffing. The duty to ensure that the budget submitted by the board to the Commissioner of Professional and Financial Regulation must be is sufficient, if approved, to provide for adequate legal and investigative personnel on the board's staff and that of the Attorney General to assure ensure that professional liability complaints described in Title 24, section 2607 and complaints regarding a section of this chapter can be resolved in a timely fashion. The board's staff must include one position staffed by an individual who is primarily a consumer assistant. The functions and expense of the consumer assistant position must be shared on a pro rata basis with the Board of Osteopathic Licensure. Within the limit set by section 3279, the board shall charge sufficient licensure fees to finance this budget provision. The board shall submit legislation to request an increase in these fees should they prove inadequate to the provisions of this subsection.

Within the limit of funds provided to it by the board, the Department of the Attorney General shall make available to the board sufficient legal and investigative staff to enable all consumer complaints mentioned in this subsection to be resolved in a timely fashion; ~~and~~

Sec. H-2. 32 MRSA §3269, sub-§16, as amended by PL 1993, c. 600, Pt. A, §202, is further amended to read:

16. Executive director. ~~The board may power to~~ to appoint an executive director who serves at the pleasure of the board and who shall assist the board in carrying out its administrative duties and responsibilities under this chapter. The salary range for the

executive director must be set by the board within the range established by Title 2, section 6-C; and

Sec. H-3. 32 MRSA §3269, sub-§17 is enacted to read:

17. Approval of licenses. The power to direct staff to review and approve applications for licensure or renewal in accordance with criteria established in law or in rules adopted by the board. Licensure decisions made by staff may be appealed to the full board.

See title page for effective date.

CHAPTER 261

H.P. 1277 - L.D. 1737

An Act to Amend the Forester Licensing Law

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

Sec. 1. 5 MRSA §12004-A, sub-§17, as amended by PL 1999, c. 687, Pt. B, §1, is further amended to read:

17. State Board of Licensure for Professional Foresters	\$35/Day	32 MRSA §5004 §5505
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Sec. 2. 12 MRSA §8868, sub-§3, as enacted by PL 1989, c. 555, §10, is amended to read:

3. Professional forester. "Professional forester" means a person licensed pursuant to Title 32, chapter 75 76.

Sec. 3. 32 MRSA c. 75, as amended is repealed.

Sec. 4. 32 MRSA c. 76 is enacted to read:

CHAPTER 76

FORESTER LICENSING

SUBCHAPTER 1

GENERAL PROVISIONS

§5501. Definitions

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

1. Board. "Board" means the Board of Licensure of Foresters.

2. Department. "Department" means the Department of Professional and Financial Regulation.

3. Forester. "Forester" means a person licensed under this chapter to practice forestry.

4. Forestry. "Forestry" means services relating to forestry requiring the application of forestry principles and techniques. The services include, but are not limited to, investigations, consultations, timber inventory, development of forest management plans, responsible supervision of forest management, forest utilization, appraisal of severed or unsevered timber, forest economics or other forestry activities as carried out in connection with any public or private lands. "Forestry" does not include services for the physical implementation of cutting, hauling, handling or processing of forest products or for the physical implementation of timber stand improvements or other silvicultural activities or measuring or scaling activities performed by persons licensed under Title 10, section 2365-A.

5. Intern forester. "Intern forester" means a person licensed under this chapter to practice forestry under the sponsorship of a forester.

6. Person. "Person" means an individual.

7. Sponsor. "Sponsor" means a forester who is responsible for overseeing the activities of an intern forester.

8. Supervisor. "Supervisor" means a forester who is responsible for the activities of an unlicensed person providing services under the direction of the forester.

§5502. License required

Except as provided in section 5503, it is unlawful for a person to practice forestry or advertise or offer to practice forestry without a license issued under this chapter.

§5503. Exemptions to licensing

A license is not required for forestry activities conducted by:

1. Forestry instructional and educational institutions. A forestry instructional and educational institution approved by the Commissioner of Education pursuant to the laws of the State or a program of education at an institution licensed or approved by the State to grant a bachelor's or higher degree;