

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-THIRD LEGISLATURE

SECOND REGULAR SESSION
January 2, 2008 to March 31, 2008

FIRST SPECIAL SESSION
April 1, 2008 to April 18, 2008

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
JUNE 30, 2008

THE GENERAL EFFECTIVE DATE FOR
FIRST SPECIAL SESSION
NON-EMERGENCY LAWS IS
JULY 18, 2008

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

Penmor Lithographers
Lewiston, Maine
2008

Dental Examiners, except that duties of independent practice dental hygienists set forth in section 1094-Q, subsection 1 may not be restricted or expanded by the board. Dental auxiliaries include, but are not limited to, dental hygienists, independent practice dental hygienists, dental assistants, expanded function dental assistants, dental laboratory technicians and denturists.

PART D

Sec. D-1. 13 MRSA §732, sub-§4, as enacted by PL 2001, c. 640, Pt. B, §2 and affected by §7, is amended to read:

4. Dentists, denturists and independent practice dental hygienists. For the purposes of this chapter, a denturist or independent practice dental hygienist licensed under Title 32, chapter 16 may organize with a dentist who is licensed under Title 32, chapter 16 and may become a shareholder of a dental practice incorporated under the corporation laws. At no time may ~~a denturist one~~ or more denturists or independent practice dental hygienists in sum have an equal or greater ownership interest in a dental practice than the dentist or dentists have in that practice.

See title page for effective date.

CHAPTER 621

H.P. 1644 - L.D. 2278

**An Act To Create Efficiencies
in Professional Licensing Laws
Pursuant to the State
Government Evaluation Act
Review of the Department of
Professional and Financial
Regulation**

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

Sec. 1. 5 MRSA §12004-A, sub-§44, as amended by PL 2001, c. 166, §1, is repealed.

Sec. 2. 10 MRSA §8003, sub-§5-A, ¶A, as enacted by PL 2007, c. 402, Pt. C, §3, is amended to read:

A. The office, board or commission may deny or refuse to renew a license, may suspend or revoke a license and may impose other discipline as authorized in this subsection for any of the following reasons:

- (1) The practice of fraud, deceit or misrepresentation in obtaining a license from a bureau, office, board or commission, or in connection with services rendered while engaged in the occupation or profession for which the person is licensed;

- (2) Any gross negligence, incompetence, misconduct or violation of an applicable code of ethics or standard of practice while engaged in the occupation or profession for which the person is licensed;

- (3) Subject to the limitations of Title 5, chapter 341, conviction of a Class A, B or C crime or of a crime that bears directly on the licensed profession or occupation;

- (4) Any violation of the governing law of an office, board or commission;

- (5) Any violation of the rules of an office, board or commission;

- (6) Engaging in any activity requiring a license under the governing law of an office, board or commission that is beyond the scope of acts authorized by the license held;

- (7) Continuing to act in a capacity requiring a license under the governing law of an office, board or commission after expiration, suspension or revocation of that license;

- (8) Aiding or abetting unlicensed practice by a person who is not licensed as required by the governing law of an office, board or commission;

- (9) Noncompliance with an order or consent agreement of an office, board or commission;

- (10) Failure to produce any requested documents in the licensee's possession or under the licensee's control concerning a pending complaint or proceeding or any matter under investigation; or

- (11) Any violation of a requirement imposed pursuant to ~~paragraph D, subparagraph (1) or (2)~~ section 8003-G.

Sec. 3. 10 MRSA §8003, sub-§5-A, ¶D, as enacted by PL 2007, c. 402, Pt. C, §3, is amended to read:

D. The office, board or commission may:

- (1) ~~Require all applicants for license renewal to respond to all inquiries set forth on renewal forms;~~

- (2) ~~Require all licensees and applicants for licensure to report in writing any of the following to the office, board or commission no later than 10 days after the change or event, as the case may be:~~

- (a) ~~Change of name or address;~~

- (b) ~~Criminal conviction;~~

- (c) ~~Revocation, suspension or other disciplinary action taken in this or any other~~

~~jurisdiction against any occupational or professional license held by the applicant or licensee; or~~

~~(d) Any material change in the conditions or qualifications set forth in the original application for licensure submitted to the office, board or commission.~~

(3) Except as provided in Title 37-B, section 390-A, adopt rules requiring continuing professional or occupational education and require applicants for license renewal to present proof of satisfactory completion of continuing professional or occupational education in accordance with such rules. Failure to comply with the continuing education rules is punishable by nonrenewal of the license and other discipline authorized by this subsection. Notwithstanding any contrary provision set forth in the governing law of an office, board or commission, continuing education requirements may coincide with the license renewal period. Rules adopted pursuant to this subparagraph are routine technical rules as described in Title 5, chapter 375, subchapter 2-A;

(4) Issue continuing education deferments in cases of undue hardship;

(5) Grant inactive status licenses to licensees in accordance with rules that may be adopted by each office, board or commission. The fee for an inactive status license may not exceed the statutory fee cap for license renewal set forth in the governing law of the office, board or commission. Licensees in inactive status are required to pay license renewal fees for renewal of an inactive status license and may be required to pay a reinstatement fee as set by the Director of the Office of Licensing and Registration if the license is reactivated on a date other than the ordinary renewal date of the license. Any rules of an office, board or commission regulating inactive status licensure must describe the obligations of an inactive status licensee with respect to any ongoing continuing education requirement in effect for licensees of the office, board or commission and must set forth any requirements for reinstatement to active status, which requirements may include continuing education. Rules adopted pursuant to this subparagraph are routine technical rules as described in Title 5, chapter 375, subchapter 2-A; and

(6) Delegate to staff the authority to review and approve applications for licensure pursuant to procedures and criteria established by rule. Rules adopted pursuant to this subpara-

graph are routine technical rules as described in Title 5, chapter 375, subchapter 2-A.

Sec. 4. 10 MRSA §8003-G is enacted to read:

§8003-G. Duty to require certain information from applicants and licensees

The Office of Licensing and Registration, referred to in this subsection as "the office," including the licensing boards and commissions and regulatory functions within the office, shall require:

1. Respond to inquiries. All applicants for license renewal to respond to all inquiries set forth on renewal forms; and

2. Report in writing. All licensees and applicants for licensure to report in writing to the office no later than 10 days after the change or event, as the case may be:

A. Change of name or address;

B. Criminal conviction;

C. Revocation, suspension or other disciplinary action taken in this or any other jurisdiction against any occupational or professional license held by the applicant or licensee; or

D. Any material change in the conditions or qualifications set forth in the original application for licensure submitted to the office.

Sec. 5. 32 MRSA §2315, sub-§3, as repealed by PL 2007, c. 402, Pt. M, §3, is reenacted to read:

3. Final orders. The decision of the Superior Court on an appeal is final. An order by a state oil and solid fuel compliance officer and any order by the board are final and subject to no further appeal upon failure to file a timely, written appeal as provided in subsection 2.

Sec. 6. 32 MRSA §2315, sub-§4, as repealed by PL 2007, c. 402, Pt. M, §4, is reenacted to read:

4. Injunction to enforce order. Upon the failure of any person to carry out a final order as provided in subsection 3, the board may petition the Superior Court for the county in which the building or premises are located for an injunction to enforce that order. If the court determines, upon hearing such a petition, that a lawful final order was issued, it shall order compliance.

Sec. 7. 32 MRSA §3112, first ¶, as amended by PL 2007, c. 402, Pt. N, §3, is further amended to read:

The Board of Examiners in Physical Therapy, as established by Title 5, section 12004-A, subsection 31, and within the Department of Professional and Financial Regulation, consists of 2 4 physical therapists, ~~one physical therapist assistant, one physician~~ and one public member as defined in Title 5, section 12004-A.

Sec. 8. 32 MRSA §3651-A, as amended by PL 2007, c. 402, Pt. P, §§7 and 8, is further amended to read:

§3651-A. Requirements and licensure

1. Residency requirement. An applicant who has graduated after January 1, 1991 from podiatric medical school as set forth in section ~~3651-B~~ 3651-C seeking licensure to practice podiatry shall provide the board with evidence of satisfactory completion of at least one year of postgraduate clinical training in a podiatric residency training program approved by the accrediting body of the American Podiatric Medical Association, or its successor or other organization approved by the board.

2. Residency licensure. A doctor of podiatric medicine who has graduated after January 1, 1991 from podiatric medical school as set forth in section ~~3651-B~~ 3651-C may not practice podiatric medicine in a podiatric residency program without first having applied for and obtained a residency license from the board.

A. An applicant for a residency license must be a doctor of podiatric medicine who is a graduate of a school of podiatry, as set forth in this chapter. An examination is not required for applicants for residency licensure. The fee for residency licensure is the same as the fee for licensure for that year. A residency license may be denied for a reason for which a podiatric medical license may be disciplined under section 3655-A.

B. A residency license is valid only for the practice of podiatric medicine as part of the postgraduate residency program. A residency license is subject to discipline for a reason for which a podiatric medical license may be disciplined under section 3655-A. If the holder of a residency license is terminated from or otherwise ceases to be a resident in the postgraduate residency program, the residency license becomes void as of the date the resident is terminated or ceases to be a resident.

C. A residency license is valid for up to one year, and may be renewed annually before the first day of July of every year, not to exceed an aggregate of 4 years. Renewal of a residency license is subject to the same requirements and conditions as the initial residency license.

Sec. 9. 32 MRSA §6217-B, sub-§1, as enacted by PL 2007, c. 402, Pt. U, §12, is amended to read:

1. Active abuse. Active abuse of alcohol or any other drug that in the judgment of the board is detrimental to the performance or competency of a ~~certified alcohol and drug counselor, alcohol and drug counsel-~~

~~ing aide or certified clinical supervisor~~ licensee of the board; or

Sec. 10. 32 MRSA §7026, as amended by PL 2007, c. 402, Pt. V, §4, is further amended to read:

§7026. State Board of Social Worker Licensure

The State Board of Social Worker Licensure, as established by Title 5, section 12004-A, subsection 38, within the Department of Professional and Financial Regulation, shall administer this chapter. The board consists of 7 members appointed by the Governor. ~~Three~~ Five members of the board must be licensed clinical social workers, ~~or licensed master social workers or certified social workers—~~independent practice; ~~2 must be licensed social workers;~~ and there must be 2 public members as defined in Title 5, section 12004-C. In addition, board members must meet the qualifications required under section 7027.

Appointments are for 3-year terms. Appointments of members must comply with Title 10, section 8009.

Sec. 11. 32 MRSA §12213, as amended by PL 2007, c. 402, Pt. Z, §5, is further amended to read:

§12213. Appointment

The Board of Accountancy, as established by Title 5, section 12004-A, subsection 1, within the department consists of 5 members appointed by the Governor. Each member of the board must be a resident of this State. ~~Three~~ Four members must be holders of certificates issued under section 12227 and licenses issued under section 12251 and must have had, as their principal occupation, active practice as certified public accountants for at least the 5 preceding years. ~~One member must hold a certificate issued under section 12239 and a license issued under section 12251 and must have had, as a principal occupation, active practice as a noncertified public accountant for at least the 5 preceding years.~~ One member of the board must be a public member as defined in Title 5, section 12004-A. Appointments are for 3-year terms. Appointments of members must comply with Title 10, section 8009. The Governor may remove a member of the board for cause.

Sec. 12. 32 MRSA §12506, as enacted by PL 1995, c. 671, §13, is amended to read:

§12506. Rulemaking

Rules adopted pursuant to section 12522, subsection 4; ~~and section 12526, subsection 3~~ are major substantive rules as defined by Title 5, chapter 375, subchapter ~~H-A~~ 2-A. All other rules adopted pursuant to this chapter are routine technical rules.

Sec. 13. 32 MRSA c. 115, as amended, is repealed.

Sec. 14. 32 MRSA §13852, sub-§2, as amended by PL 2007, c. 402, Pt. EE, §2, is further amended to read:

2. Members. The board consists of ~~9~~ 8 members, ~~8~~ 7 of them appointed by the Governor. Each member must be a resident of this State. Six members must be licensed clinical counseling professionals under this chapter, ~~2~~ 4 of whom must be clinical professional counselors, ~~2~~ one must be a marriage and family therapist and ~~one of whom~~ one must be a pastoral counselor. Each counselor member must have been, for at least 5 years immediately preceding appointment, actively engaged as a practitioner, educator or researcher. ~~Two members~~ One member must be a public ~~members~~ member as defined in Title 5, section 12004-A and may not be currently practicing counseling or receiving compensation for counseling services. ~~One of the 2 public members must be a consumer of counseling services.~~ One member, appointed by the Chancellor of the University of Maine System, must be a member of the university faculty involved in the training of counselors.

Sec. 15. 32 MRSA §13852, sub-§7, as amended by PL 2007, c. 402, Pt. EE, §2, is further amended to read:

7. Meetings; chair; quorum. The board shall meet at least once a year to conduct its business and to elect a chair. Additional meetings must 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. ~~Five~~ Four members of the board constitute a quorum.

Sec. 16. 32 MRSA §13861-A, sub-§2, as enacted by PL 2007, c. 402, Pt. EE, §9, is repealed.

Sec. 17. 32 MRSA §13863, sub-§9 is enacted to read:

9. Sunset. This section applies only to an individual who is validly registered under this section by August 1, 2008.

Sec. 18. 32 MRSA §13911, as enacted by PL 1989, c. 346, §3, is repealed.

Sec. 19. 32 MRSA §14805, sub-§4, as reenacted by PL 2007, c. 402, Pt. LL, §5, is reenacted to read:

4. Final orders. The decision of the Superior Court on an appeal as provided is final. An order by a state propane and natural gas inspector and an order by the board are final and subject to no further appeal upon failure to file a timely, written appeal as provided.

Sec. 20. 32 MRSA §14805, sub-§5, as repealed by PL 2007, c. 402, Pt. LL, §6, is reenacted to read:

5. Injunction to enforce order. Upon the failure of any person to carry out a final order as provided, the board may petition the Superior Court for the county in which the building or premises are located for an injunction to enforce that order. If the court determines, upon hearing such a petition, that a lawful final order was issued, it shall order compliance.

Sec. 21. Appointments and vacancies; Board of Examiners in Physical Therapy and Board of Counseling Professionals Licensure. The Governor shall make the appointments to the Board of Examiners in Physical Therapy pursuant to the Maine Revised Statutes, Title 32, section 3112 as soon as possible, but not later than December 1, 2008. The change in the qualifications distribution of members appointed to the Board of Counseling Professionals Licensure pursuant to Title 32, section 13852, subsection 2 must be achieved by attrition. One public member position is eliminated upon the effective date of this Act.

Sec. 22. Streamlining initiative for licensing programs. The Commissioner of Professional and Financial Regulation is responsible for developing criteria and a process for reviewing all licensing programs within the Office of Licensing and Registration that may include the following: program history; complaint history; the number of licensees; growth in applicants; existence of national certification; oversight in the practice setting; and public safety. The commissioner shall submit a summary of the findings pursuant to review to the joint standing committee of the Legislature having jurisdiction over business, research and economic development matters by January 15, 2009. The joint standing committee of the Legislature having jurisdiction over business, research and economic development matters is authorized to submit legislation related to its findings to the First Regular Session of the 124th Legislature.

Sec. 23. Appropriations and allocations. The following appropriations and allocations are made.

PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF Licensing and Enforcement 0352

Initiative: Deallocates funds due to a reduction in the number of members of the Board of Counseling Professionals Licensure from 9 to 8 and the elimination of the Maine Athletic Commission.

OTHER SPECIAL REVENUE FUNDS	2007-08	2008-09
Personal Services	\$0	(\$420)
All Other	\$0	(\$3,829)

OTHER SPECIAL	\$0	(\$4,249)
REVENUE FUNDS TOTAL		

See title page for effective date.

CHAPTER 622

S.P. 905 - L.D. 2279

An Act To Ensure Equitable Payment for E-9-1-1 Services

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, 2/3 of all of the members elected to each House have determined it necessary to enact this measure.

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, E-9-1-1 service is of vital importance to the citizens of the State; and

Whereas, some municipalities currently do not have a public safety answering point, requiring by law the provision of those services by the Department of Public Safety; and

Whereas, in order to meet the demands of those municipalities, the Department of Public Safety has had to hire more personnel, resulting in increased costs to the department; and

Whereas, the law is unclear as to the ability of the Department of Public Safety to bill municipalities for these services; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 25 MRSA §1535 is enacted to read:

§1535. Fees for public safety answering point services and dispatch services

The Public Utilities Commission may, on its own motion or at the request of the department or a political subdivision of the State, establish in an adjudicatory proceeding the fees that must be paid by political

subdivisions for public safety answering point services and dispatch services provided by the department to those political subdivisions, including services provided pursuant to section 2923-A. In the proceeding, the commission shall establish the revenue requirement for the department's relevant dispatch and public safety answering point services and a fee design for the recovery of the department's revenue requirement to ensure the fees reasonably reflect services provided. In any proceeding held under this section, the department and all political subdivisions that are to be provided public safety answering point services and dispatch services shall provide to the commission all information the commission determines necessary in order to establish the fees.

Sec. 2. 25 MRSA §2923-A is enacted to read:

§2923-A. Requirements of municipalities

Each municipality that does not have a public safety answering point shall contract with an entity that does have a public safety answering point, which may be the department, for receiving 9-1-1 calls and, as appropriate, directly dispatching emergency services or, through transfer routing or relay routing, passing 9-1-1 calls to public or private safety agencies that dispatch emergency services. If a municipality without a public safety answering point does not enter into such an agreement, the department shall serve as the public safety answering point for that municipality and the municipality shall pay the department for the provision of those services. Fees received by the department pursuant to this section must be deposited in the Consolidated Emergency Communications Fund established in section 1534.

Sec. 3. Initial setting of fees. The Public Utilities Commission shall undertake an adjudicatory proceeding pursuant to the Maine Revised Statutes, Title 25, section 1535 to initially establish the fees that must be paid by political subdivisions of the State for public safety answering point services and dispatch services provided by the Department of Public Safety.

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

Effective April 15, 2008.

CHAPTER 623

H.P. 1657 - L.D. 2298

An Act To Improve the Reporting Requirements of Boards and Commissions

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