Maine Revised Statutes

Title 32: PROFESSIONS AND OCCUPATIONS

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Title 32: PROFESSIONS AND OCCUPATIONS

Chapter 1: ACCOUNTANTS

Subchapter 1: BOARD OF ACCOUNTANCY

§1.

(REPEALED)

SECTION HISTORY
1967, c. 344, §3 (RP).

§2.

(REPEALED)

SECTION HISTORY
1967, c. 344, §3 (RP).

§3.

(REPEALED)

SECTION HISTORY
1967, c. 344, §3 (RP).

§51.

(REPEALED)

SECTION HISTORY
1967, c. 344, §3 (RP).

§52.

(REPEALED)

SECTION HISTORY
1967, c. 344, §3 (RP).

§53.

(REPEALED)

SECTION HISTORY
1967, c. 344, §3 (RP).

§54.

(REPEALED)

SECTION HISTORY
1967, c. 344, §3 (RP).

§55.

(REPEALED)

SECTION HISTORY
1967, c. 344, §3 (RP).

§56.

(REPEALED)

SECTION HISTORY
1967, c. 344, §3 (RP).

§57.

(REPEALED)

SECTION HISTORY
1967, c. 344, §3 (RP).

Chapter 1-A: GENERAL PROVISIONS

Subchapter 1: GENERAL PROVISIONS CONCERNING LICENSES

§59. TEMPORARY LICENSES

If a person holds a valid license issued by an occupational or professional licensing board established in Title 5, section 12004-A, at the time of initial enlistment in the United States Armed Forces and the license lapses during the licensee's initial enlistment, that person may obtain a temporary license if that person meets all requirements for issuance of that license except examination by payment of a $5 fee, provided that the application for the temporary license is made not later than 90 days after the date of discharge. This temporary license shall continue in force until the results of the next licensing examination are available. The terms of this section shall apply notwithstanding any contrary provision contained in the statutes governing these licensing boards. [1989, c. 503, Pt. B, §118 (AMD).]

SECTION HISTORY
1985, c. 297, (NEW). 1989, c. 503, §B118 (AMD).

§59-A. CONSUMER INFORMATION

(REPEALED)

SECTION HISTORY
1993, c. 600, §A26 (NEW). 1995, c. 370, §1 (RP).

§59-B. DEFERMENT FOR CONTINUING EDUCATION

(REPEALED)

SECTION HISTORY
2001, c. 285, §1 (NEW). 2007, c. 402, Pt. C, §7 (RP).

§60. STANDARDIZED TERMS

(REPEALED)

SECTION HISTORY
1993, c. 600, §A26 (NEW). 1999, c. 687, §§D1,2 (AMD). 2007, c. 402, Pt. C, §8 (RP).

§60-A. CONSUMER COMPLAINTS OF BOARD PROCEDURE

Complaints received by an occupational and professional regulatory board regarding that board's administrative procedure must be filed by the board with the Department of the Attorney General. [1993, c. 600, Pt. A, §26 (NEW).]

SECTION HISTORY
1993, c. 600, §A26 (NEW).

§60-B. COMPENSATION

(REPEALED)

SECTION HISTORY
1995, c. 397, §16 (NEW). 1995, c. 502, §H18 (AMD). 1999, c. 687, §D3 (RP).

§60-C. DISPOSITION OF FEES

(REPEALED)

SECTION HISTORY
1995, c. 397, §16 (NEW). 1995, c. 502, §H18 (AMD). 1999, c. 687, §D3 (RP).

§60-D. CONTRACTS

(REPEALED)

SECTION HISTORY
1995, c. 397, §16 (NEW). 1995, c. 502, §H18 (AMD). 1999, c. 386, §D1 (AMD). 1999, c. 687, §D4 (RP).

§60-E. BUDGET

(REPEALED)

SECTION HISTORY
1995, c. 397, §16 (NEW). 1995, c. 502, §H18 (AMD). 1999, c. 687, §D5 (RP).

§60-F. EMPLOYEES

(REPEALED)

SECTION HISTORY
1995, c. 397, §16 (NEW). 1995, c. 502, §H18 (AMD). 1999, c. 687, §D5 (RP).

§60-G. DISCIPLINARY ACTIONS; UNLICENSED PRACTICE

(REPEALED)

SECTION HISTORY
1995, c. 397, §16 (NEW). 1995, c. 502, §H18 (AMD). 1997, c. 727, §C7 (AMD). 1999, c. 687, §D6 (RP).

§60-H. INVESTIGATIONS; ENFORCEMENT DUTIES; ASSESSMENTS

(REPEALED)

SECTION HISTORY
1995, c. 397, §16 (NEW). 1995, c. 502, §H18 (AMD). 1999, c. 386, §D2 (AMD). 1999, c. 687, §D7 (RP).

§60-I. CITATIONS AND FINES

(REPEALED)

SECTION HISTORY
1995, c. 397, §16 (NEW). 1995, c. 502, §H18 (AMD). 1999, c. 386, §D3 (AMD). 1999, c. 687, §D8 (RP).

Subchapter 2: SUNRISE REVIEW PROCEDURES
HEADING: PL 1995, C. 686, §2 (NEW)

§60-J. EVALUATION CRITERIA

Pursuant to Title 5, section 12015, subsection 3, any professional or occupational group or organization, any individual or any other interested party, referred to in this section as the "applicant group," that proposes regulation of any unregulated professional or occupational group or substantial expansion of regulation of a regulated professional or occupational group shall submit with the proposal written answers and information pertaining to the evaluation criteria enumerated in this section to the appropriate committee of the Legislature. The technical committee, the Commissioner of Professional and Financial Regulation, referred to in this subchapter as the "commissioner," and the joint standing committee, before it makes its final recommendations to the full Legislature, also shall accept answers and information pertaining to the evaluation criteria from any party that opposes such regulation or expansion and from any other interested party. All answers and information submitted must identify the applicant group, the opposing party or the interested party making the submission and the proposed regulation or expansion of regulation that is sought or opposed. The commissioner may develop standardized questions designed to solicit information concerning the evaluation criteria. The preauthorization evaluation criteria are: [1995, c. 686, §2 (NEW).]

1. **Data on group.** A description of the professional or occupational group proposed for regulation or expansion of regulation, including the number of individuals or business entities that would be subject to regulation, the names and addresses of associations, organizations and other groups representing the practitioners and an estimate of the number of practitioners in each group;

[1995, c. 686, §2 (NEW) .]

2. **Specialized skill.** Whether practice of the profession or occupation proposed for regulation or expansion of regulation requires such a specialized skill that the public is not qualified to select a competent practitioner without assurances that minimum qualifications have been met;

[1995, c. 686, §2 (NEW) .]

3. **Public health; safety; welfare.** The nature and extent of potential harm to the public if the profession or occupation is not regulated, the extent to which there is a threat to the public's health, safety or welfare and production of evidence of potential harm, including a description of any complaints filed with state law enforcement authorities, courts, departmental agencies, other professional or occupational boards and professional and occupational associations that have been lodged against practitioners of the profession or occupation in this State within the past 5 years;

[1995, c. 686, §2 (NEW) .]

4. **Voluntary and past regulatory efforts.** A description of the voluntary efforts made by practitioners of the profession or occupation to protect the public through self-regulation, private certifications, membership in professional or occupational associations or academic credentials and a statement of why these efforts are inadequate to protect the public;

[1995, c. 686, §2 (NEW) .]

5. **Cost; benefit.** The extent to which regulation or expansion of regulation of the profession or occupation will increase the cost of goods or services provided by practitioners and the overall cost-effectiveness and economic impact of the proposed regulation, including the indirect costs to consumers;

[1995, c. 686, §2 (NEW) .]

6. **Service availability of regulation.** The extent to which regulation or expansion of regulation of the profession or occupation would increase or decrease the availability of services to the public;

[1995, c. 686, §2 (NEW) .]

7. **Existing laws and regulations.** The extent to which existing legal remedies are inadequate to prevent or redress the kinds of harm potentially resulting from nonregulation and whether regulation can be provided through an existing state agency or in conjunction with presently regulated practitioners;

[1995, c. 686, §2 (NEW) .]

8. **Method of regulation.** Why registration, certification, license to use the title, license to practice or another type of regulation is being proposed, why that regulatory alternative was chosen and whether the proposed method of regulation is appropriate;

[1995, c. 686, §2 (NEW) .]

9. **Other states.** A list of other states that regulate the profession or occupation, the type of regulation, copies of other states' laws and available evidence from those states of the effect of regulation on the profession or occupation in terms of a before-and-after analysis;

[1995, c. 686, §2 (NEW) .]

10. **Previous efforts.** The details of any previous efforts in this State to implement regulation of the profession or occupation;

[1995, c. 686, §2 (NEW) .]

11. **Mandated benefits.** Whether the profession or occupation plans to apply for mandated benefits;

[1995, c. 686, §2 (NEW) .]

12. **Minimal competence.** Whether the proposed requirements for regulation exceed the standards of minimal competence and what those standards are; and

[1995, c. 686, §2 (NEW) .]

13. **Financial analysis.** The method proposed to finance the proposed regulation and financial data pertaining to whether the proposed regulation can be reasonably financed by current or proposed licensees through dedicated revenue mechanisms.

[1995, c. 686, §2 (NEW) .]

SECTION HISTORY
1995, c. 686, §2 (NEW).

§60-K. COMMISSIONER'S INDEPENDENT ASSESSMENT

1. **Fees.** Any applicant group whose regulatory proposal has been directed to the commissioner for independent assessment shall pay an administrative fee determined by the commissioner, which may not exceed $500. The commissioner may waive the fee if the commissioner finds it in the public's interest to do so. Such a finding by the commissioner may include, but is not limited to, circumstances in which the commissioner determines that:

A. The applicant group is an agency of the State; or [1995, c. 686, §2 (NEW).]

B. Payment of the application fee would impose unreasonable hardship on members of the applicant group. [1995, c. 686, §2 (NEW).]

[1995, c. 686, §2 (NEW) .]

2. **Criteria.** In conducting the independent assessment, the commissioner shall apply the evaluation criteria established in section 60-J to all of the answers and information submitted to the commissioner or otherwise collected by the commissioner pursuant to section 60-J.

[1995, c. 686, §2 (NEW) .]

3. **Recommendations.** The commissioner shall prepare a final report, for the joint standing committee of the Legislature that requested the evaluation, that includes any legislation required to implement the commissioner's recommendation. The commissioner may recommend that no legislative action be taken on a proposal. If the commissioner finds that final answers to the evaluation criteria are sufficient to support some form of regulation, the commissioner shall recommend an agency to be responsible for the regulation and the level of regulation to be assigned to the applicant group. The recommendations of the commissioner must reflect the least restrictive method of regulation consistent with the public interest.

[1995, c. 686, §2 (NEW) .]

SECTION HISTORY
1995, c. 686, §2 (NEW).

§60-L. TECHNICAL COMMITTEE; FEES; MEMBERSHIP; DUTIES; COMMISSIONER'S RECOMMENDATION

1. **Fees.** Any applicant group whose regulatory proposal has been directed to the commissioner for review by a technical committee shall pay a fee determined by the commissioner as required to administer the technical committee, which fee may not exceed $1,000. The administrative fee is not refundable, but the commissioner may waive all or part of the fee if the commissioner finds it in the public's interest to do so. Such a finding by the commissioner may include, but is not limited to, circumstances in which the commissioner determines that:

A. The applicant group is an agency of the State; or [1995, c. 686, §2 (NEW).]

B. Payment of the application fee would impose unreasonable hardship on members of the applicant group. [1995, c. 686, §2 (NEW).]

[1995, c. 686, §2 (NEW) .]

2. **Technical committee membership.** The commissioner shall appoint a technical committee consisting of 7 members to examine and investigate each proposal.

A. Two members must be from the profession or occupation being proposed for regulation or expansion of regulation. [1995, c. 686, §2 (NEW).]

B. Two members must be from professions or occupations with a scope of practice that overlaps that of the profession or occupation being proposed for regulation or expansion of regulation. If there is more than one overlapping profession or occupation, representatives of the 2 with the greatest number of practitioners must be appointed. [1995, c. 686, §2 (NEW).]

C. One member must be the commissioner or the commissioner's designee. [1995, c. 686, §2 (NEW).]

D. Two members must be public members. These persons and their spouses, parents or children may not be or ever have been members of, and may not have or ever have had a material financial interest in, the profession or occupation being proposed for regulation or expansion of regulation or another profession or occupation with a scope of practice that may overlap that of the profession or occupation being proposed for regulation. [1995, c. 686, §2 (NEW).]

The professional and public members serve without compensation. The chair of the committee must be the commissioner, the commissioner's designee or a public member. The commissioner shall ensure that the total composition of the committee is fair and equitable.

[1995, c. 686, §2 (NEW) .]

3. **Meetings.** As soon as possible after appointment, a technical committee shall meet and review the proposal assigned to it. Each committee shall investigate the proposed regulation and, on its own motion, may solicit public input. Notice of all meetings must be printed in the legislative calendar at an appropriate time preceding the meeting.

[1995, c. 686, §2 (NEW) .]

4. **Procedure for review.** Applicant groups are responsible for furnishing evidence upon which a technical committee makes its findings. The technical committee may also utilize information received through public input or through its own research or investigation. The committee shall make a report of its findings and file the report with the commissioner. The committee shall evaluate the application presented to it based on the information provided as required by section 60-J. If the committee finds that additional information is required to assist in developing its recommendations, it may require that the applicant group provide this information or may otherwise solicit information for this purpose. If the committee finds that final answers to the evaluation criteria are sufficient to support regulation of a profession or occupation not currently regulated, the committee must also recommend the least restrictive method of regulation to be implemented, consistent with the public interest. Whether it recommends approval or denial of an application, the committee may make additional recommendations regarding solutions to problems identified during the review.

[1995, c. 686, §2 (NEW) .]

5. **Commissioner report.** After receiving and considering reports from the technical committee, the commissioner shall prepare a final report, for the joint standing committee of the Legislature that requested the review, that includes any legislation required to implement the commissioner's recommendation. The final report must include copies of the committee report, but the commissioner is not bound by the findings and recommendations of the report. In compiling the report, the commissioner shall apply the criteria established in section 60-J and may consult with the technical committee. The recommendations of the commissioner must reflect the least restrictive method of regulation consistent with the public interest. The final report must be submitted to the joint standing committee of the Legislature having jurisdiction over occupational and professional regulation matters no later than 9 months after the proposal is submitted to the technical committee and must be made available to all other members of the Legislature upon request.

The commissioner may recommend that no legislative action be taken on a proposal. If the commissioner recommends that a proposal of an applicant group be approved, the commissioner shall recommend an agency to be responsible for the regulation and the level of regulation to be assigned to the applicant group.

[1995, c. 686, §2 (NEW) .]

SECTION HISTORY
1995, c. 686, §2 (NEW).

Subchapter 3: REPORT

§60-N. REPORT

(REPEALED)

SECTION HISTORY
2007, c. 240, Pt. LLL, §1 (NEW). 2007, c. 466, Pt. C, §8 (RP).

Chapter 2: NURSING HOME ADMINISTRATORS LICENSING BOARD

§61. REQUIREMENT FOR LICENSE

A medical care facility other than a hospital may not operate except under the supervision of a licensed administrator and an individual may not be an administrator of a medical care facility other than a hospital unless that individual is the holder of a current administrator's license or a temporary permit issued pursuant to this chapter. [1993, c. 600, Pt. A, §27 (AMD).]

SECTION HISTORY
1969, c. 350, (NEW). 1969, c. 359, (NEW). 1969, c. 556, §1 (AMD). 1971, c. 162, §1 (AMD). 1971, c. 544, §108 (RP). 1985, c. 233, §3 (AMD). 1991, c. 341, §§1,2 (AMD). 1993, c. 600, §A27 (AMD).

§62. DEFINITIONS

1. **Administrator.** "Administrator" means an individual who is charged with and has responsibility for the general administration of a facility other than a hospital whether or not such individual has an ownership interest in such home and whether or not that individual's functions and duties are shared with one or more other individuals.

[1991, c. 341, §2 (AMD) .]

1-A. **Administrator-in-training.** "Administrator-in-training" means an individual who meets the qualifications set forth in rules by the board, is engaged in a training program defined in rules and approved by the board and is under the supervision of a preceptor also approved by the board.

[1995, c. 502, Pt. H, §19 (NEW) .]

2. **Board.** "Board" means the Nursing Home Administrators Licensing Board.

[1985, c. 233, §4 (AMD) .]

2-A. **Commissioner.** "Commissioner" means the Commissioner of Professional and Financial Regulation.

[1987, c. 769, Pt. A, §118 (AMD) .]

2-B. **Department.** "Department" means the Department of Professional and Financial Regulation.

[1987, c. 769, Pt. A, §118 (AMD) .]

3. **Medical care facility other than hospitals.** "Medical care facility other than hospitals" means any facility providing therein, in addition to lodging and board, medical care or nursing supervision to sick, invalid, infirm, disabled or convalescent persons.

[1985, c. 233, §4 (AMD) .]

4. **Preceptor.** "Preceptor" means an individual who is licensed by the board and who meets qualifications set forth in rules by the board to supervise the program of one or more administrators-in-training.

[1995, c. 502, Pt. H, §20 (NEW) .]

SECTION HISTORY
1969, c. 350, (NEW). 1969, c. 359, (NEW). 1969, c. 590, §59 (AMD). 1971, c. 544, §108 (RP). 1985, c. 233, §4 (AMD). 1987, c. 769, §A118 (AMD). 1995, c. 502, §§H19,20 (AMD).

§63. BOARD; POWERS AND DUTIES

(REPEALED)

SECTION HISTORY
1969, c. 350, (NEW). 1969, c. 359, (NEW). 1969, c. 556, §2 (AMD). 1969, c. 590, §§59-A (AMD). 1971, c. 162, §2 (AMD). 1971, c. 226, (AMD). 1971, c. 518, §§2,3 (AMD). 1971, c. 544, §108 (RP). 1971, c. 622, §115 (AMD). 1973, c. 399, §§1,2 (AMD). 1975, c. 293, §4 (AMD). 1975, c. 771, §331 (AMD). 1983, c. 744, §§1-3 (AMD). 1983, c. 812, §§188,189 (AMD). 1985, c. 233, §5 (RP).

§63-A. BOARD ESTABLISHED; MEMBERSHIP AND ORGANIZATION

1. **Membership.** The Nursing Home Administrators Licensing Board, as established by Title 5, section 12004-A, subsection 23, consists of 7 members appointed by the Governor. The members must be residents of this State. One member must be a registered nurse with not less than 5 years of active practice in nursing homes in the State. Two members must be public members as defined in Title 5, section 12004-A. Three members must be administrators of nursing homes with not less than 5 years of active experience in the State. One member must be an administrator of an intermediate care facility for persons with intellectual disabilities with not less than 5 years of active practice in that capacity.

[2011, c. 542, Pt. A, §56 (AMD) .]

2. **Terms.** Appointments are for 3-year terms. Appointments of members must comply with Title 10, section 8009. A member may be removed by the Governor for cause.

[2007, c. 402, Pt. E, §1 (AMD) .]

3. **Meetings; chair.** 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.

[2013, c. 246, Pt. B, §2 (AMD) .]

4. **Compensation.**

[1995, c. 397, §17 (RP) .]

5. **Employees.**

[1995, c. 397, §17 (RP) .]

6. **Fees.**

[1995, c. 397, §18 (RP) .]

7. **Reports; budget.**

[2007, c. 402, Pt. E, §1 (RP) .]

SECTION HISTORY
1971, c. 339, (NEW). 1971, c. 544, §109 (RP). 1985, c. 233, §6 (NEW). 1985, c. 785, §B129 (AMD). 1989, c. 503, §B119 (AMD). 1991, c. 341, §3 (AMD). 1993, c. 600, §A28 (AMD). 1993, c. 659, §A1 (AMD). 1995, c. 397, §§17-19 (AMD). 1999, c. 790, §A35 (AMD). 2007, c. 402, Pt. E, §1 (AMD). 2011, c. 542, Pt. A, §56 (AMD). 2013, c. 246, Pt. B, §2 (AMD).

§63-B. BOARD POWERS AND DUTIES

The board has the powers and duties set forth in this section. [2007, c. 402, Pt. E, §2 (AMD).]

1. **Board to administer and enforce.** The board shall administer and enforce this chapter and shall evaluate the qualifications of and approve the examination to be taken by applicants for licensure under this chapter.

[2007, c. 402, Pt. E, §2 (AMD) .]

2. **Rules.** The board may, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter 2, adopt rules commensurate with the authority vested in it by this chapter, including, but not limited to, standards for courses of study for administrators, requirements for the training, experience and qualifications for the licensure of administrators and administrators-in-training, continuing educational requirements, standards and procedures for examination for the licensure of administrators, standards and procedures for the issuance, revocation and suspension of licenses of administrators and for the investigation of written charges and complaints filed with the board. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2007, c. 402, Pt. E, §2 (AMD) .]

3. **Temporary licenses.** The board may by rule determine conditions and procedures by which it may issue temporary licenses. Temporary licenses may be issued for periods of up to one year. The total length of multiple temporary licenses may not extend beyond one year.

[1993, c. 2, §32 (COR) .]

4. **Examinations.** Written examinations for licensure must be held one or more times each year, at such times and places as the board may determine.

[2007, c. 402, Pt. E, §2 (AMD) .]

5. **Application and license fees.** Fees for applications and initial licenses for nursing home administrators and administrators-in-training may be established as provided in section 67.

[2007, c. 402, Pt. E, §2 (AMD) .]

6. **Hearings.**

[2007, c. 402, Pt. E, §2 (RP) .]

7. **Contracts.**

[1995, c. 397, §20 (RP) .]

8. **Exception.** This chapter or the rules under this chapter may not be construed to require an applicant for a license as a nursing home administrator who is certified by a recognized church or religious denomination that teaches reliance on spiritual means alone for healing as having been approved to administer institutions certified by that church or denomination for the care and treatment of the sick in accordance with its teachings to demonstrate proficiency in medical techniques or to meet medical educational qualifications or medical standards not in accord with the remedial care and treatment provided in those institutions. An individual licensed under this exception may act as an administrator only in those institutions described in this subsection.

[1993, c. 600, Pt. A, §31 (AMD) .]

SECTION HISTORY
1985, c. 233, §6 (NEW). 1991, c. 341, §4 (AMD). RR 1993, c. 2, §32 (COR). 1993, c. 600, §§A29-31 (AMD). 1995, c. 397, §20 (AMD). 1995, c. 502, §H21 (AMD). 2001, c. 323, §§11,12 (AMD). 2007, c. 402, Pt. E, §2 (AMD).

§64. APPEALS

(REPEALED)

SECTION HISTORY
1969, c. 350, (NEW). 1969, c. 359, (NEW). 1971, c. 544, §108 (RP). 1973, c. 303, §3 (AMD). 1977, c. 694, §536 (RPR). 1983, c. 378, §1 (RP).

§64-A. DISCIPLINARY ACTIONS

(REPEALED)

SECTION HISTORY
1983, c. 378, §2 (NEW). 1991, c. 341, §5 (AMD). 1993, c. 600, §A32 (AMD). 1999, c. 547, §B57 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 402, Pt. E, §3 (RP).

§64-B. DENIAL OR REFUSAL TO RENEW LICENSE; DISCIPLINARY ACTION

In addition to the grounds enumerated in Title 10, section 8003, subsection 5-A, paragraph A, the board may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A for: [2007, c. 402, Pt. E, §4 (NEW).]

1. **Habitual substance abuse.** Habitual substance abuse that has resulted or is foreseeably likely to result in the licensee performing assigned services in a manner that endangers the health or safety of patients;

[2007, c. 402, Pt. E, §4 (NEW) .]

2. **Mental or physical condition.** A professional diagnosis of a mental or physical condition that has resulted or may result in the licensee performing assigned services in a manner that endangers the health or safety of patients; or

[2007, c. 402, Pt. E, §4 (NEW) .]

3. **False advertising.** Engaging in false, misleading or deceptive advertising.

[2007, c. 402, Pt. E, §4 (NEW) .]

SECTION HISTORY
2007, c. 402, Pt. E, §4 (NEW). 2011, c. 286, Pt. D, §1 (AMD).

§65. LICENSE RENEWAL

All licenses issued under this chapter, except temporary licenses, expire annually on a date established by the commissioner and become invalid if not renewed. Every individual licensed under this chapter shall pay, on or before the expiration date, the license renewal fee as set under section 67. Renewals are contingent upon evidence of participation in continuing professional education. A license may be renewed up to 90 days after the date of its expiration upon payment of a late fee in addition to the renewal fee. An individual who submits an application for renewal more than 90 days after the license expiration date is subject to all requirements governing new applicants under this chapter, except that the board may, in its discretion and giving due consideration to the protection of the public, waive examination if that renewal application is received, together with the late fee and renewal fee, within 2 years from the date of the expiration. [2007, c. 402, Pt. E, §5 (AMD).]

SECTION HISTORY
1971, c. 184, (NEW). 1971, c. 544, §111 (RP). 1985, c. 233, §6 (NEW). 1993, c. 600, §A33 (AMD). 2001, c. 323, §13 (AMD). 2007, c. 402, Pt. E, §5 (AMD).

§66. ENFORCEMENT

(REPEALED)

SECTION HISTORY
1985, c. 233, §6 (NEW). 1991, c. 341, §6 (RPR). 1993, c. 600, §A34 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 402, Pt. E, §6 (RP).

§67. FEES

The Director of the Office of Professional and Occupational Regulation within the Department of Professional and Financial Regulation may establish by rule fees for purposes authorized under this chapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for any one purpose may not exceed $200 annually. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A. [2001, c. 323, §14 (NEW); 2011, c. 286, Pt. B, §5 (REV).]

SECTION HISTORY
2001, c. 323, §14 (NEW). 2011, c. 286, Pt. B, §5 (REV).

§68. UNLICENSED PRACTICE

An individual who violates section 61 is subject to the provisions of Title 10, section 8003-C. [2007, c. 402, Pt. E, §7 (NEW).]

SECTION HISTORY
2007, c. 402, Pt. E, §7 (NEW).

Chapter 2-A: AMBULANCE SERVICE

§71. REQUIREMENT FOR LICENSE

(REPEALED)

SECTION HISTORY
1971, c. 544, §113 (NEW). 1975, c. 293, §4 (AMD). 1981, c. 661, §1 (RP).

§72. DEFINITIONS

(REPEALED)

SECTION HISTORY
1971, c. 544, §113 (NEW). 1973, c. 319, (AMD). 1975, c. 293, §4 (AMD). 1975, c. 698, §§1,2 (AMD). 1977, c. 241, §§1-4 (AMD). 1979, c. 706, §1 (AMD). 1981, c. 661, §1 (RP).

§73. POWERS AND DUTIES

(REPEALED)

SECTION HISTORY
1971, c. 544, §113 (NEW). 1975, c. 293, §4 (AMD). 1975, c. 417, §§1-3 (AMD). 1975, c. 623, §§49-B (AMD). 1975, c. 698, §§3,4 (AMD). 1977, c. 241, §§5-9 (AMD). 1977, c. 694, §§537,538 (AMD). 1979, c. 143, §1 (AMD). 1979, c. 288, §§1,2 (AMD). 1979, c. 706, §§2-6 (AMD). 1981, c. 661, §1 (RP).

§73-A. REPORT; LIAISON; LIMITATIONS

(REPEALED)

SECTION HISTORY
1977, c. 604, §6 (NEW). 1981, c. 661, §1 (RP).

§73-B. BUDGET

(REPEALED)

SECTION HISTORY
1977, c. 604, §6 (NEW). 1979, c. 288, §3 (AMD). 1981, c. 661, §1 (RP).

§74. TRANSPORTATION TO HOSPITAL

(REPEALED)

SECTION HISTORY
1971, c. 544, §113 (NEW). 1975, c. 189, (AMD). 1981, c. 661, §1 (RP).

§75. APPEALS

(REPEALED)

SECTION HISTORY

1971, c. 544, §113 (NEW). 1973, c. 303, §3 (AMD). 1975, c. 293, §4 (AMD). 1977, c. 694, §539 (RPR). 1979, c. 706, §7 (AMD). 1981, c. 661, §1 (RP).

§76. IMMUNITY TO LICENSED AMBULANCE SERVICE PERSONNEL

(REPEALED)

SECTION HISTORY
1971, c. 544, §113 (NEW). 1975, c. 452, §2 (RP).

Chapter 2-B: MAINE EMERGENCY MEDICAL SERVICES ACT OF 1982

§81. TITLE

This chapter may be cited as the "Maine Emergency Medical Services Act of 1982." [1981, c. 661, §2 (NEW).]

SECTION HISTORY
1981, c. 661, §2 (NEW).

§81-A. STATEMENT OF PURPOSE

It is the purpose of this chapter to promote and provide for a comprehensive and effective emergency medical services system to ensure optimum patient care. The Legislature finds that the provision of medical assistance in an emergency is a matter of vital concern affecting the health, safety and welfare of the public. [1985, c. 730, §§3, 16 (NEW).]

It is the intent of the Legislature to designate that a central agency be responsible for the coordination and integration of all state activities concerning emergency medical services and the overall planning, evaluation, coordination, facilitation and regulation of emergency medical services systems. Further, the Legislature finds that the provision of prompt, efficient and effective emergency medical dispatch and emergency medical care, a well-coordinated trauma care system, effective communication between prehospital care providers and hospitals and the safe handling and transportation of the sick and injured are key elements of an emergency medical services system. This chapter is intended to promote the public health, safety and welfare by providing for the creation of a statewide emergency medical services system with standards for all providers of emergency medical services. [2007, c. 274, §1 (AMD).]

SECTION HISTORY
1985, c. 730, §§3,16 (NEW). 1989, c. 857, §60 (AMD). 1993, c. 311, §2 (AMD). 2007, c. 274, §1 (AMD).

§82. REQUIREMENT FOR LICENSE

1. **Licenses required.** An ambulance service, ambulance, nontransporting emergency medical service, emergency medical services person, emergency medical dispatch center or emergency medical dispatcher may not operate or practice unless duly licensed by the Emergency Medical Services' Board pursuant to this chapter, except as stated in subsection 2.

[2007, c. 274, §2 (AMD) .]

2. **Licenses not required.** A Maine license shall not be required for:

A. Ambulance services and ambulances licensed in another state or province, provided that they do not have a base of operation in Maine and do not routinely pick up patients from the scene of their illness or injury in Maine and do not routinely carry patients between points both of which are in Maine; [1981, c. 661, §2 (NEW).]

B. Ambulance services, ambulances, nontransporting emergency medical services and emergency medical services persons responding into Maine from out-of-state in response to civil emergencies or natural disasters; [1995, c. 161, §2 (AMD).]

C. Ambulance services, ambulances, nontransporting emergency medical services and emergency medical services persons responding into Maine from out-of-state pursuant to board approved mutual aid agreements with Maine licensed services; [1995, c. 161, §3 (AMD).]

D. A licensed physician; [1981, c. 661, §2 (NEW).]

E. A person serving as an industrial nurse or safety officer, a school or youth camp nurse, a life guard, a member of a ski patrol, a nurse or technician in a hospital or a physician's office, or other similar occupation in which the person provides on-site emergency treatment at a single facility to the patrons or employees of that facility; [2009, c. 211, Pt. B, §26 (AMD).]

F. A person serving as a medical technician with the United States Armed Forces, the Maine Army National Guard or the Maine Air National Guard; or [1993, c. 130, §1 (AMD).]

G. A flight nurse while acting within the scope of employment with a Maine licensed air ambulance service. [1993, c. 130, §2 (NEW).]

When any doubt exists as to the applicability of this section to any person or service, that person or service shall seek an advisory opinion from the board.

[2009, c. 211, Pt. B, §26 (AMD) .]

3. **Violation.** A person who violates this section commits a Class E crime.

[2007, c. 274, §3 (AMD) .]

SECTION HISTORY
1981, c. 661, §2 (NEW). 1985, c. 730, §§4,16 (AMD). 1989, c. 857, §61 (AMD). 1991, c. 588, §1 (AMD). 1993, c. 130, §§1,2 (AMD). 1995, c. 161, §§1-3 (AMD). 2005, c. 683, §§C9,10 (AMD). 2007, c. 274, §§2, 3 (AMD). 2009, c. 211, Pt. B, §26 (AMD).

§83. DEFINITIONS

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings. [1981, c. 661, §2 (NEW).]

1. **Advanced emergency medical technician.** "Advanced emergency medical technician" means an emergency medical services' person licensed to perform advanced emergency medical treatment.

[1981, c. 661, §2 (NEW) .]

2. **Advanced emergency medical treatment.** "Advanced emergency medical treatment" means those portions of emergency medical treatment:

A. Defined by the board to be advanced; and [2011, c. 271, §1 (NEW).]

B. That the board determines may be performed by persons licensed under this chapter within a system of emergency care approved by the board when acting under the supervision of:

(1) An appropriate physician; or

(2) A physician assistant or nurse practitioner, licensed by the State, and authorized by a hospital to supervise and direct the actions of an emergency medical services person. [2011, c. 271, §1 (NEW).]

[2011, c. 271, §1 (AMD) .]

3. **Ambulance.** "Ambulance" means any vehicle, whether an air, ground or water vehicle, that is designed, constructed or routinely used or intended to be used for the transportation of ill or injured persons. The licensing of these vehicles is in addition to any registration required by other authorities. For the purposes of this chapter, vehicles operated by the Maine Army National Guard, Maine Air National Guard or the United States Armed Forces shall not be considered ambulances.

[1983, c. 693, §1 (AMD) .]

3-A. **Ambulance attendant.**

[2011, c. 271, §2 (RP) .]

4. **Ambulance equipment.** "Ambulance equipment" means those materials and devices which are carried in ambulances.

[1981, c. 661, §2 (NEW) .]

5. **Ambulance service.** "Ambulance service" means any person, persons or organization which holds itself out to be a provider of transportation of ill or injured persons or which routinely provides transportation for ill or injured persons. For the purposes of this chapter, the Maine Army National Guard, Maine Air National Guard and the United States Armed Forces shall not be considered ambulance services. It does not mean a person, persons or an organization which transports ill or injured persons for reasons not connected with their illness or injury. It does not mean a nursing home licensed under chapter 405, a boarding home licensed under chapter 1665, a children's home licensed under chapter 1669, or similar residential facility when transporting its own residents or those of another similarly licensed facility when those residents do not require emergency medical treatment.

[1983, c. 693, §2 (AMD) .]

6. **Basic emergency medical services person.** "Basic emergency medical services person" means a person licensed to perform basic emergency medical treatment. Licensed first responders and basic emergency medical technicians are basic emergency medical services persons.

[2011, c. 271, §3 (AMD) .]

7. **Basic emergency medical technician.** "Basic emergency medical technician" means a basic emergency medical services person who has successfully completed the Maine Emergency Medical Services course for emergency medical technicians and has met the other requirements for licensure at this level.

[1999, c. 182, §5 (AMD) .]

8. **Basic emergency medical treatment.** "Basic emergency medical treatment" means those portions of emergency medical treatment:

A. Defined by the board to be basic; and [2011, c. 271, §4 (NEW).]

B. That the board determines may be performed by persons licensed under this chapter within a system of emergency care approved by the board when acting under the supervision of:

(1) An appropriate physician; or

(2) A physician assistant or nurse practitioner, licensed by the State, and authorized by a hospital to supervise and direct the actions of an emergency medical services person. [2011, c. 271, §4 (NEW).]

[2011, c. 271, §4 (AMD) .]

8-A. **Board.** "Board" means the Emergency Medical Services' Board established pursuant to section 88.

[1989, c. 857, §64 (RPR) .]

9. **Commissioner.** "Commissioner" means the Commissioner of Public Safety.

[1991, c. 588, §2 (AMD) .]

10. **Department.** "Department" means the Department of Public Safety.

[1991, c. 588, §2 (AMD) .]

10-A. **Director.** "Director" means the Director of Maine Emergency Medical Services.

[1991, c. 588, §3 (NEW) .]

11. **Emergency Medical Services' Advisory Board.**

[1985, c. 730, §§7,16 (RP) .]

12. **Emergency medical services' person.** "Emergency medical services' person" means any person who routinely provides emergency medical treatment to the sick or injured.

[1981, c. 661, §2 (NEW) .]

13. **Emergency medical treatment.** "Emergency medical treatment" means those skills, techniques and judgments, as defined by the board, which are directed to maintaining, improving or preventing the deterioration of the medical condition of the patient and which are appropriate to be delivered by trained persons at the scene of a patient's illness or injury outside the hospital and during transportation to the hospital.

[1985, c. 730, §§8, 16 (AMD) .]

13-A. **First responder.** "First responder" means an emergency medical services person who has successfully completed the Maine Emergency Medical Services course for first responders and has met the other requirements for licensure at this level.

[1999, c. 182, §6 (NEW) .]

14. **Nontransporting emergency medical service.** "Nontransporting emergency medical service" means any organization, person or persons who hold themselves out as providers of emergency medical treatment and who do not routinely provide transportation to ill or injured persons, and who routinely offer or provide services to the general public beyond the boundaries of a single recreational site, business, school or other facility. For the purposes of this chapter, a physician making house calls as a part of ordinary medical practice is not considered to be a nontransporting emergency medical service.

A nontransporting emergency medical service must have an agreement with a licensed ambulance service, to ensure continuity of care and adequate transportation for its patients. An ambulance service is not required to approve of or enter into an agreement with a nontransporting emergency medical service.

[1995, c. 161, §4 (AMD) .]

14-A. **Health care practitioner.** "Health care practitioner" has the meaning set forth in Title 24, section 2502, subsection 1-A.

[1987, c. 638, §1 (NEW) .]

14-B. **Flight nurse.** "Flight nurse" means any registered professional nurse, currently licensed in the State, who has completed a prehospital care curriculum authorized by the Emergency Medical Services' Board.

[1993, c. 130, §3 (NEW) .]

15. **License.** "License" means a full, temporary, provisional or conditional license issued by the board under this chapter.

[1985, c. 730, §§8, 16 (AMD) .]

16. **Licensed ambulance attendant.**

[1989, c. 857, §65 (RP) .]

16-A. **Maine Emergency Medical Services.** "Maine Emergency Medical Services" means the board, the emergency medical services director and staff within the Department of Public Safety responsible for carrying out the purposes of this chapter.

[1991, c. 588, §4 (AMD) .]

16-B. **Medical Direction and Practices Board.** "Medical Direction and Practices Board" means the board consisting of each regional medical director, a representative of the Maine Chapter of the American College of Emergency Medicine Physicians and the statewide emergency medical services medical director. The Medical Direction and Practices Board is responsible for creation, adoption and maintenance of Maine Emergency Medical Services protocols.

[2011, c. 271, §5 (AMD) .]

17. **Medical control physician.** "Medical control physician" means a physician who supervises emergency medical services persons.

[1989, c. 857, §67 (AMD) .]

17-A. **Online medical control.** "Online medical control" means the online physician, physician assistant or nurse practitioner, licensed by the State, authorized by a hospital to supervise and direct the actions of emergency medical services persons.

[2007, c. 274, §5 (NEW) .]

18. **Office of Emergency Medical Services.**

[1991, c. 588, §5 (RP) .]

18-A. **Physician.** "Physician" has the meaning set forth in Title 24, section 2502, subsection 3.

[1987, c. 638, §1 (NEW) .]

19. **Protocol or Maine Emergency Medical Services protocol.** "Protocol" or "Maine Emergency Medical Services protocol" means the written statement, developed by the Medical Direction and Practices Board and filed with the board, specifying the conditions under which some form of emergency medical care is to be given by emergency medical services persons.

[2007, c. 274, §6 (AMD) .]

20. **Regional council.** "Regional council" means a business entity recognized by the board that represents a geographical area of the State, as designated by the board, with respect to matters subject to this chapter.

[2007, c. 274, §7 (AMD) .]

21. **Regions.** "Regions" means those geographical areas of the State designated by the board to be represented by a regional council.

[1985, c. 730, §§8, 16 (AMD) .]

21-A. **Registered nurse.** "Registered nurse" has the same meaning set forth under section 2102, subsection 5.

[1993, c. 130, §4 (NEW) .]

22. **Statewide emergency medical services' medical director.** "Statewide emergency medical services' medical director" means a licensed physician appointed by the board.

[1987, c. 273, §3 (AMD) .]

23. **Trauma.** "Trauma" means a single or multisystem life-threatening or limb-threatening injury requiring immediate medical or surgical intervention or treatment to prevent death or permanent disability.

[1993, c. 311, §3 (NEW) .]

24. **Trauma care system.** "Trauma care system" means a subsystem within the emergency medical services system, consisting of an organized arrangement of personnel, equipment and facilities, designed to manage the treatment of the trauma patient.

[1993, c. 311, §3 (NEW) .]

SECTION HISTORY
1981, c. 661, §2 (NEW). 1983, c. 693, §§1,2 (AMD). 1985, c. 730, §§5-8,16 (AMD). 1987, c. 273, §§1-3 (AMD). 1987, c. 638, §1 (AMD). 1989, c. 857, §§62-68 (AMD). 1991, c. 588, §§2-5 (AMD). 1993, c. 130, §§3,4 (AMD). 1993, c. 311, §3 (AMD). 1995, c. 161, §4 (AMD). 1997, c. 644, §1 (AMD). 1999, c. 182, §§4-7 (AMD). 2007, c. 274, §§4-7 (AMD). 2011, c. 271, §§1-5 (AMD).

§84. BOARD: POWERS AND DUTIES; GOALS; WORK PLANS

1. **Powers and duties.** The board has the following powers and duties.

A. The board shall conduct an emergency medical services program to fulfill the purposes, requirements and goals of this chapter. The board shall adopt the forms, rules, procedures, testing requirements, policies and records appropriate to carry out the purposes, requirements and goals of this chapter. [1991, c. 588, §6 (AMD).]

B. Notwithstanding any other provision of law, any rule-making hearing held under this chapter and required by the Maine Administrative Procedure Act, Title 5, chapter 375, must be conducted by the board, the director or other staff as delegated by rule or a person in a major policy-influencing position, as defined in Title 5, section 931, who has responsibility over the subject matter of the proposed rule. [1991, c. 588, §7 (AMD).]

C. The board shall appoint a licensed physician as statewide emergency medical services medical director and may appoint a licensed physician as statewide assistant emergency medical services medical director. These physicians shall advise Maine Emergency Medical Services and shall carry out the duties assigned to the medical director pursuant to this chapter, or as specified by contract. A person appointed and serving as the statewide emergency medical services medical director or statewide assistant

emergency medical services medical director is immune from any civil liability, as are employees of governmental entities under the Maine Tort Claims Act, for acts performed within the scope of the medical director's duties. [2011, c. 271, §6 (AMD).]

D. Rules adopted pursuant to this chapter must include, but are not limited to, the following:

(1) The composition of regional councils and the process by which they come to be recognized;

(2) The manner in which regional councils must report their activities and finances and the manner in which those activities must be carried out under this chapter;

(4) The requirements for licensure for all vehicles, persons and services subject to this chapter, including training and testing of personnel; and

(5) Fees to be charged for licenses under this section. [2011, c. 271, §7 (AMD).]

E. With the approval of the commissioner, the board shall appoint a Director of Maine Emergency Medical Services. [1991, c. 588, §10 (NEW).]

[2011, c. 271, §§6, 7 (AMD) .]

2. **Goals.** The board shall establish and pursue its goals as follows.

A. The board shall monitor the provision of emergency medical services within the State. The board shall establish, by rule, its goals in monitoring the provision of services and in ensuring that these services are appropriately delivered. These goals must be in the nature of objectives and do not constitute absolute requirements. In establishing these goals, the board shall seek the input of individuals, agencies, services and organizations interested in emergency medical services. [2007, c. 274, §10 (AMD).]

B. In each year, and in conjunction with the preparation of the emergency medical services report, the director under the direction of the board shall prepare a list of those among the goals that most need to be pursued in the succeeding year. [2007, c. 274, §10 (AMD).]

C. In pursuing these goals, the board may contract for services with regional councils; cooperate with other departments or agencies; accept and disburse granted funds; or act in other lawful ways as may best serve the public good. [2007, c. 274, §10 (AMD).]

[2007, c. 274, §10 (AMD) .]

3. **Work plans.** Each year, the board shall issue an emergency medical services' report indicating:

A. The extent to which the emergency medical system was used throughout the State, and the incidence of various medical conditions which called it into service; [1981, c. 661, §2 (NEW).]

B. The extent and nature of the continuing programs of training and support for emergency medical services carried out by the regional councils and Maine Emergency Medical Services; [1991, c. 588, §12 (AMD).]

C. The extent to which the goals laid down in this chapter were pursued, and with what success; [1981, c. 661, §2 (NEW).]

D. The plan, for the coming year, to pursue the various goals; and [1981, c. 661, §2 (NEW).]

E. The income and expenditures of the board and of the regional councils. [1991, c. 588, §12 (AMD).]

[1991, c. 588, §12 (AMD) .]

4. **Establishment of community paramedicine pilot projects.** Using the same process established by the board in rule for using pilot projects to evaluate the workability and appropriateness of incorporating a particular emergency medical treatment technique or a type of equipment into any licensure level, the board may establish up to 12 pilot projects for the purpose of developing and evaluating a community paramedicine program. A pilot project established pursuant to this subsection may not exceed 3 years in duration.

As used in this subsection, "community paramedicine" means the practice by an emergency medical services provider primarily in an out-of-hospital setting of providing episodic patient evaluation, advice and treatment directed at preventing or improving a particular medical condition, within the scope of practice of the emergency medical services provider as specifically requested or directed by a physician.

The board shall establish the requirements and application and approval process of pilot projects established pursuant to this subsection. At a minimum, an emergency medical services provider, including, but not limited to, an ambulance service or nontransporting emergency medical service, that conducts a pilot project shall work with an identified primary care medical director, have an emergency medical services medical director and collect and submit data and written reports to the board, in accordance with requirements established by the board.

On or before January 30th of each year, the board shall submit a written report to the joint standing committees of the Legislature having jurisdiction over criminal justice and public safety matters and labor, commerce, research and economic development matters that summarizes the work and progress during the previous calendar year of each pilot project authorized pursuant to this subsection.

[2011, c. 562, §1 (NEW) .]

SECTION HISTORY
1981, c. 661, §2 (NEW). 1983, c. 674, (AMD). 1985, c. 730, §§9,16 (AMD). 1987, c. 273, §4 (AMD). 1987, c. 402, §A166 (AMD). 1991, c. 588, §§6-12 (AMD). 2007, c. 274, §§8-10 (AMD). 2011, c. 271, §§6, 7 (AMD). 2011, c. 562, §1 (AMD).

§84-A. COMMISSIONER; POWERS AND DUTIES

1. **Powers and duties.** The commissioner has the following powers and duties:

A. To review the function and operation of the board and regional councils to assure that these organizations are in compliance with their statutory and public service responsibilities; [1985, c. 730, §§10, 16 (NEW).]

B. To act as a liaison between the board and other administrative units within the department, with the Governor and the Legislature; [1985, c. 730, §§10, 16 (NEW).]

C. To carry out the requirements as set forth in this chapter or as delegated by the board through rules; and [1985, c. 730, §§10, 16 (NEW).]

D. To provide the staff and administrative support necessary for the board to carry out its function. [1985, c. 730, §§10, 16 (NEW).]

[1985, c. 730, §§10, 16 (NEW) .]

SECTION HISTORY
1985, c. 730, §§10,16 (NEW).

§85. EMERGENCY MEDICAL PERSONS

1. **Basic and advanced skills.** With advice from and in consultation with the Medical Direction and Practices Board, the board may provide, by rule, which skills, techniques and judgments constitute a basic emergency medical treatment.

[2007, c. 274, §11 (AMD) .]

2. **Advanced emergency medical treatment.** With the advice and consultation noted in subsection 1, the board may provide, by rule, which advanced skills, techniques and judgments may be supervised by a physician by means of standing orders, by voice radio and by other means. In every case, advanced emergency medical treatment must be given in accordance with protocols adopted by the Medical Direction and Practices Board.

The board may establish by rule appropriate licensure levels for advanced emergency medical technicians and fix the qualifications for persons to hold those licenses.

[2001, c. 229, §3 (AMD) .]

3. **Minimum requirements for licensing.** In setting rules for the licensure of emergency medical services persons, the board shall ensure that a person is not licensed to care for patients unless that person's qualifications are at least those specified in this subsection. Any person who meets these conditions is considered to have the credentials and skill demonstrations necessary for licensure to provide emergency medical treatment.

A. The person must have completed successfully the training specified in rules adopted by the board pursuant to the Maine Administrative Procedure Act. [1995, c. 161, §5 (AMD).]

B. [2007, c. 274, §12 (RP).]

C. The person must have successfully completed a state cognitive test for basic emergency medical treatment and a board-approved practical evaluation of emergency medical treatment skills. [2011, c. 271, §8 (AMD).]

D. [2001, c. 474, §1 (RP).]

The board shall obtain criminal history record information containing a record of public criminal history record information as defined in Title 16, section 703, subsection 9 for an applicant seeking licensure under this subsection. Information obtained pursuant to this subsection is confidential and may be used only to determine suitability for issuance of a license to provide emergency medical services. The results of criminal history record checks received by the board are for official use only and may not be disseminated outside the board. The applicant for licensure shall pay the expense of obtaining the information required by this subsection.

[2013, c. 267, Pt. B, §25 (AMD) .]

4. **Minimum requirements for relicensing.** The board shall set by rule the license and relicensing requirements and the relicensing interval for emergency medical services persons. A person who is duly licensed in Maine as an emergency medical services person must be issued a renewal license if the following requirements are met:

A. The person must have satisfactorily completed relicensure training as defined in the rules; and [1991, c. 742, §3 (NEW).]

B. The person must have satisfactorily demonstrated competence in the skills required for the license level. Skill competence may be satisfied by a combination of run report reviews and continuing education training programs conducted in accordance with the rules or by satisfactorily completing the state cognitive test and a board-approved practical evaluation of emergency medical treatment skills. [2011, c. 271, §9 (AMD).]

If the person is not duly licensed at the time of application, the person must demonstrate skill and knowledge as defined in the rules.

To maintain a valid license, an emergency medical services person must meet the criteria set out in this section. If those criteria are not met, a person does not hold a valid license and must reapply for licensure.

[2011, c. 271, §9 (AMD) .]

5. **Ambulance attendants grandfathered.**

[2011, c. 271, §10 (RP) .]

6. **Ambulance operator course.** By January 1, 2007, a person whose job description includes operating an ambulance in an emergency mode or transporting a patient must possess within 6 months of being employed, certification of successful completion of a basic ambulance vehicle operator course, or a course that has been approved by the board as an equivalent, in order to operate an ambulance in an emergency mode or to transport a patient. This requirement applies to all paid and volunteer ambulance operators and transporters. This requirement is in addition to vehicle operator requirements of Title 29-A or other law. A person whose job description includes operating an ambulance in an emergency mode or transporting a patient who successfully completes a basic ambulance vehicle operator course or a course that has been approved by the board as an equivalent may apply to the board for reimbursement for the cost of the course.

[2005, c. 664, Pt. O, §1 (AMD) .]

SECTION HISTORY
1981, c. 661, §2 (NEW). 1985, c. 730, §§11,16 (AMD). 1989, c. 857, §69 (AMD). 1991, c. 588, §13 (AMD). 1991, c. 613, (AMD). 1991, c. 742, §§1-3 (AMD). 1993, c. 152, §§1,2 (AMD). 1995, c. 161, §§5,6 (AMD). 1997, c. 26, §1 (AMD). 1997, c. 26, §2 (AFF). 1999, c. 182, §8 (AMD). 1999, c. 764, §1 (AMD). 2001, c. 45, §1 (AMD). 2001, c. 229, §3 (AMD). 2001, c. 474, §1 (AMD). 2001, c. 697, §C1 (AMD). 2003, c. 559, §1 (AMD). 2005, c. 664, §O1 (AMD). 2005, c. 681, §§1,2 (AMD). 2007, c. 274, §§11-14 (AMD). 2011, c. 271, §§8-10 (AMD). 2013, c. 267, Pt. B, §25 (AMD).

§85-A. EMERGENCY MEDICAL DISPATCH PERSONNEL

1. **Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Bureau" means the Emergency Services Communication Bureau within the Public Utilities Commission. [2005, c. 303, §3 (NEW).]

A-1. "Emergency medical dispatch center" means any entity that holds itself out to be a provider of emergency medical dispatch services. [2007, c. 42, §1 (NEW).]

B. "Emergency Medical Dispatch Priority Reference System" means a system approved by the bureau and the board that includes:

(1) A protocol for emergency medical dispatcher response to calls;

(2) A continuous quality improvement program that measures compliance with the protocol through ongoing random case review of each emergency medical dispatcher; and

(3) A training curriculum and testing process consistent with the protocol. [2005, c. 303, §3 (NEW).]

C. "Emergency medical dispatch services" means any of the following services provided in the context of an emergency call made to the E-9-1-1 system:

(1) Reception, evaluation or processing of calls;

(2) Provision of dispatch life support;

(3) Management of requests for emergency medical assistance; and

(4) Evaluation or improvement of the emergency medical dispatch process, including identifying the nature of an emergency request, prioritizing the urgency of a request, dispatching necessary resources, providing medical aid and safety instructions to the caller and coordinating the responding resources as needed. [2007, c. 42, §1 (AMD).]

D. "Emergency medical dispatcher" means a person licensed by the board who provides emergency medical dispatch services as a member of an emergency medical dispatch center licensed by the board. [2007, c. 42, §1 (AMD).]

E. "Provider of emergency medical dispatch services" means an emergency medical dispatcher or emergency medical dispatch center licensed by the board. [2007, c. 42, §1 (AMD).]

F. "Public safety answering point" has the same meaning as in Title 25, section 2921. [2005, c. 303, §3 (NEW).]

[2007, c. 42, §1 (AMD) .]

2. **Mandatory qualifications.** The board, in consultation with the bureau, shall adopt rules governing qualifications for and standards to be observed by providers of emergency medical dispatch services. The rules must, at a minimum:

A. Establish licensing requirements for emergency medical dispatchers and emergency medical dispatch centers; [2007, c. 42, §1 (AMD).]

B. Establish minimum education and continuing education requirements for emergency medical dispatchers; [2007, c. 42, §1 (AMD).]

C. Establish a process for approving an Emergency Medical Dispatch Priority Reference System that all emergency medical dispatchers are required to follow; [2005, c. 303, §3 (NEW).]

D. Require an emergency medical dispatch center to inform the board when the center employs or terminates employment of an emergency medical dispatcher; [2007, c. 42, §1 (AMD).]

E. Establish or provide for Maine Emergency Medical Services approval of emergency medical dispatcher training programs, which must be conducted in accordance with standards approved by the board; [2007, c. 42, §1 (AMD).]

F. Establish qualifications for instructors of emergency medical dispatcher training programs; [2007, c. 42, §1 (AMD).]

G. Require regular reporting to the board by an emergency medical dispatch center with respect to the use of the Emergency Medical Dispatch Priority Reference System; and [2007, c. 42, §1 (AMD).]

H. Require that each emergency medical dispatch center appoint a director of emergency medical dispatch services to review and ensure compliance with the requirements of this section. [2007, c. 42, §1 (AMD).]

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2007, c. 42, §1 (AMD) .]

2-A. **Requirement to provide emergency medical dispatch services.** A public safety answering point or other licensed emergency medical dispatch center must provide emergency medical dispatch services on all medical E-9-1-1 calls directly or by transferring the call to another licensed emergency medical dispatch center.

[2011, c. 271, §11 (AMD) .]

3. **Prohibitions.** The following provisions apply to emergency medical dispatch services.

A. A person may not provide emergency medical dispatch services unless the person is licensed by the board as an emergency medical dispatcher in accordance with this section. [2007, c. 42, §1 (AMD).]

B. An entity may not operate as a public safety answering point unless licensed as an emergency medical dispatch center in accordance with this section. [2007, c. 42, §1 (AMD).]

C. A person may not offer a training course that is represented as a board-approved emergency medical dispatcher training course unless the person is approved by the board to provide such training in accordance with this section. [2007, c. 42, §1 (AMD).]

D. An emergency medical dispatch center may not provide emergency medical dispatch services except in accordance with an Emergency Medical Dispatch Priority Reference System approved in accordance with this section. [2007, c. 42, §1 (AMD).]

E. An entity may not hold itself out to be a provider of emergency medical dispatch services unless it is licensed as an emergency medical dispatch center. [2007, c. 42, §1 (NEW).]

[2007, c. 42, §1 (AMD) .]

4. **Licensing actions.** A license issued pursuant to this section is subject to the provisions of sections 90-A and 91-A. Before the board or its subcommittee or staff takes any final action to suspend or revoke an emergency medical dispatch center license or to refuse to reissue an emergency medical dispatch center license, the board shall contact the bureau for input on the effect of such an action on the E-9-1-1 system and, notwithstanding section 91-B, may, to the extent necessary for this purpose, disclose to the bureau information that is designated as confidential under section 91-B.

[2011, c. 271, §12 (AMD) .]

5. **Effect on tort claims.** Nothing in this section increases any liability that may arise or be limited under Title 14, chapter 741.

[2005, c. 303, §3 (NEW) .]

SECTION HISTORY
2005, c. 303, §3 (NEW). 2007, c. 42, §1 (AMD). 2011, c. 271, §§11, 12 (AMD).

§86. AMBULANCE SERVICES AND NONTRANSPORTING MEDICAL SERVICES

1. **Ambulance services and nontransporting medical services to be licensed.** Every ambulance service and nontransporting emergency medical service must be licensed, operate in accordance with the rules adopted for services under this chapter and carry the equipment called for in those rules.

[1995, c. 161, §7 (AMD) .]

2. **Care of patient.** Whenever an ambulance transports a patient from the scene of an emergency, the patient must be cared for by a physician, by a flight nurse or by a person licensed under this chapter to provide emergency medical care. Whenever an ambulance transports a patient from a hospital or other health care facility to another place, the patient must be cared for by:

A. The physician in charge of the patient's case, by a person licensed under this chapter or by a professional nurse; or [1981, c. 661, §2 (NEW).]

B. A licensed practical nurse, or other person appropriately trained to care for the patient, acting under orders from the patient's physician. [1981, c. 661, §2 (NEW).]

The person specified in this subsection as caring for the patient shall accompany the patient in the portion of the ambulance where the patient rides.

[1999, c. 182, §10 (AMD) .]

2-A. **Treatment.** When an ambulance service or nontransporting emergency medical service is present at an accident or other situation in which a person or persons require emergency medical treatment, the medical treatment of the patients must be carried out in accordance with any rules adopted under this chapter, any protocols as defined in section 83, subsection 19 and any orders given by online medical control; except that:

A. When a patient is already under the supervision of a personal physician or a physician's assistant or nurse practitioner supervised by that physician and the physician, physician's assistant or nurse practitioner assumes the care of the patient, then for as long as the physician, physician's assistant or nurse practitioner remains with the patient, the patient must be cared for as the physician, physician's assistant or nurse practitioner directs. The emergency medical services persons shall assist to the extent that their licenses and protocol allow; and [1993, c. 152, §3 (AMD).]

B. A patient is not required to accept treatment to which the patient does not consent. [1999, c. 182, §11 (AMD).]

[2007, c. 274, §15 (AMD) .]

3. **Air transportation.** Any patient transported by air must be flown on a service licensed under Federal Aviation Regulations, Part 135 or Part 121. In such an instance, the flight is deemed to be an air ambulance and the patient must be cared for as provided in subsection 2.

[1991, c. 588, §14 (AMD) .]

SECTION HISTORY
1981, c. 661, §2 (NEW). 1985, c. 530, §3 (AMD). 1991, c. 588, §14 (AMD). 1993, c. 152, §3 (AMD). 1995, c. 161, §§7,8 (AMD). 1999, c. 182, §§9-11 (AMD). 2007, c. 274, §15 (AMD).

§87. AMBULANCES

Each ambulance must be licensed pursuant to this chapter. It must also meet the design criteria and shall be equipped as specified in rules adopted under this chapter. [1991, c. 588, §15 (AMD).]

SECTION HISTORY
1981, c. 661, §2 (NEW). 1991, c. 588, §15 (AMD).

§87-A. TRAUMA CARE SYSTEM

1. **Trauma care system development.** Maine Emergency Medical Services shall develop a statewide trauma care system plan with the advice of the State Trauma Prevention and Control Advisory Committee.

[2007, c. 274, §16 (AMD) .]

2. **State Trauma Prevention and Control Advisory Committee.** The State Trauma Prevention and Control Advisory Committee, as established in Title 5, section 12004-I, subsection 49-B, is appointed by the board to advise the board on all matters related to trauma care system development. The committee's members must be broadly representative of trauma prevention and care providers as a whole, must be as geographically diverse as possible and must include, without limitation:

A. A representative of the board; [1993, c. 311, §4 (NEW).]

B. Four surgeons representing trauma-related subspecialties; [1993, c. 311, §4 (NEW).]

C. Two emergency physicians; [1993, c. 311, §4 (NEW).]

D. The director; [1993, c. 311, §4 (NEW).]

E. An emergency nurse; [1993, c. 311, §4 (NEW).]

F. A critical care nurse; [1993, c. 311, §4 (NEW).]

G. A trauma rehabilitation specialist; [1993, c. 311, §4 (NEW).]

H. A representative of the regional councils; [2007, c. 274, §17 (RPR).]

I. A representative of air ambulance services; [1993, c. 311, §4 (NEW).]

J. Two representatives of prehospital care providers; [1993, c. 311, §4 (NEW).]

K. Three hospital administrators, one from a small hospital, one from a medium hospital and one from a large hospital; [1993, c. 311, §4 (NEW).]

L. A representative of the Maine Hospital Association; and [1993, c. 311, §4 (NEW).]

M. A representative of trauma care system users. [1993, c. 311, §4 (NEW).]

[2007, c. 274, §17 (AMD) .]

SECTION HISTORY
1993, c. 311, §4 (NEW). 2007, c. 274, §§16, 17 (AMD).

§87-B. TRAUMA-INCIDENCE REGISTRY

The board shall collect trauma data as follows. [1993, c. 738, Pt. C, §8 (NEW).]

1. **Registry.** The board shall maintain a statewide trauma-incidence registry that meets the requirements of the federal Trauma Care Systems Planning and Development Act of 1990, Public Law 101-590, Section 1, 104 Stat. 2915. The board shall adopt rules to define trauma.

[1993, c. 738, Pt. C, §8 (NEW) .]

2. **Reporting by physicians and hospitals.** Physicians and hospitals may report trauma information to the board as follows.

A. A hospital may report to the board information regarding persons diagnosed as suffering from trauma. Trauma reports should be made no later than 30 days from the date of diagnosis or the date of discharge from the hospital, whichever is later. [1993, c. 738, Pt. C, §8 (NEW).]

B. A physician, upon request of the board, may report to the board any further information requested by the board concerning any person now or formerly under that physician's care who was diagnosed as having suffered from trauma. [1993, c. 738, Pt. C, §8 (NEW).]

C. A physician or hospital that reports in good faith in accordance with this section is not liable for any civil damages for making the report. [1993, c. 738, Pt. C, §8 (NEW).]

[1993, c. 738, Pt. C, §8 (NEW) .]

3. **Confidentiality.**

[2011, c. 271, §13 (RP) .]

SECTION HISTORY
1993, c. 738, §C8 (NEW). 2011, c. 271, §13 (AMD).

§88. EMERGENCY MEDICAL SERVICES' BOARD

The Emergency Medical Services' Board, as established by Title 5, section 12004-A, subsection 15, is responsible for the emergency medical services program. [1991, c. 588, §16 (AMD).]

1. **Composition; rules; meetings.** The board's composition, conduct and compensation are as follows.

A. The board has one member representing each region and 11 persons in addition. Of the additional persons, one is an emergency physician, one a representative of emergency medical dispatch providers, one a representative of the public, one a representative of for-profit ambulance services, one an emergency professional nurse, one a representative of nontransporting emergency medical services, one a representative of hospitals, one a fire chief, one a representative of a statewide association of fire chiefs, one a municipal emergency medical services provider and one a representative of not-for-profit ambulance services. The members that represent for-profit ambulance services, nontransporting emergency medical services and not-for-profit ambulance services must be licensed emergency medical services persons. One of the nonpublic members must be a volunteer emergency medical services provider. Appointments are for 3-year terms. Members are appointed by the Governor. The state medical director is an ex officio nonvoting member of the board. [2013, c. 62, §1 (AMD).]

B. The board shall elect its own chair to serve for a 2-year term. The board may adopt internal rules that may include, but are not limited to, termination of board membership as a consequence of irregular attendance. If a board member does not serve a full term of appointment, the Governor shall appoint a successor to fill the vacancy for the remainder of the term. Any board member may be removed by the Governor for cause. The board may have a common seal. The board may establish subcommittees as it determines appropriate. [1991, c. 588, §16 (AMD).]

C. The board shall meet at least quarterly, and at the call of its chair or at the request of 7 members. When the board meets, members are entitled to compensation according to the provisions of Title 5, chapter 379. [1991, c. 588, §16 (AMD).]

D. A majority of the members appointed and currently serving constitutes a quorum for all purposes and no decision of the board may be made without a quorum present. A majority vote of those present and voting is required for board action, except that for purposes of either granting a waiver of any of its rules or deciding to pursue the suspension or revocation of a license, the board may take action only if the proposed waiver, suspension or revocation receives a favorable vote from at least 2/3 of the members present and voting and from no less than a majority of the appointed and currently serving members. The board may use video conferencing and other technologies to conduct its business but is not exempt from Title 1, chapter 13, subchapter 1. Members of the board, its subcommittees or its staff may participate in a meeting of the board, subcommittees or staff via video conferencing, conference telephone or similar

communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection constitutes presence in person at such meeting. [2007, c. 274, §19 (AMD).]

[2013, c. 62, §1 (AMD) .]

2. **Functions.** The board shall perform the following functions.

A. The board shall direct the operations of the emergency medical services program. [1991, c. 588, §16 (AMD).]

B. With the advice of the commissioner, the board shall adopt rules in accordance with the Maine Administrative Procedure Act to carry out this chapter. In order to encourage participation at rule-making hearings by emergency medical services volunteers, the board shall hold hearings in each region as determined necessary. Each hearing must be held in the evening or at times convenient to the public and may use available technology. At least 2 members of the board shall attend each hearing. [1999, c. 182, §12 (AMD).]

C. The board shall grant licenses pursuant to this chapter. [1991, c. 588, §16 (AMD).]

D. The board shall specify in rules the criteria that must be met as a precondition to offering an emergency medical services course, refresher course or continuing education course. The board shall work toward developing consistent educational programming in terms of course content, course requirements and quality of instruction. The board shall adopt rules, which are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A, regarding the requirements for certification and licensing of persons engaged in emergency medical services education and training. [2011, c. 271, §14 (AMD).]

E. The board shall keep records and minutes of its activities and meetings. These records and minutes must be made easily accessible to the public and be provided expeditiously upon request. The board may prepare, publish and disseminate educational and other materials to improve emergency medical patient care. [2009, c. 571, Pt. Y, §1 (AMD).]

F. [1991, c. 588, §16 (RP).]

F-1. The director must be qualified by training or by experience and is appointed by the board with approval of the commissioner. The director serves for an indefinite term, subject to removal for cause. [1999, c. 182, §13 (AMD).]

G. The board shall submit to the commissioner its budgetary requirements in the same manner as is provided in Title 5, section 1665. The department shall serve as the fiscal agent for Maine Emergency Medical Services. [1991, c. 588, §16 (AMD).]

H. With the approval of the commissioner, the board may enter into contracts, subject to provisions of state law, and delegate this authority to the director. The board may also delegate, through rules, to staff, any provision necessary to carry out this chapter, including the process of hearings. Funds appropriated or allocated to the board to be contracted with the regional councils may be disbursed on a sole-source contract basis, according to guidelines established by the board. Funds must be expended in accordance with standard state contract or grant procedures and guidelines where appropriate. [1991, c. 588, §16 (AMD).]

I. The board may establish and collect licensure fees, application fees, examination fees, course and conference fees, tuition and other charges as determined necessary by the board for the efficient administration of this chapter. All funds received pursuant to this paragraph must be deposited into a nonlapsing fund established for the purpose. Maine Emergency Medical Services shall administer the fund with the advice and consent of the commissioner. Funds must be deposited with the Treasurer of State to the credit of the fund and may be invested as provided by law. Interest on these investments must be credited to the fund. [1991, c. 588, §16 (NEW).]

J. The board shall establish and maintain a statewide quality assurance and improvement committee and shall adopt rules, which are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A, regarding the requirements and authority of the statewide quality assurance and improvement committee. [1999, c. 182, §14 (NEW).]

[2011, c. 271, §14 (AMD) .]

3. **Authority.** In addition to authority otherwise conferred, the board or, as delegated, its subcommittee or staff may, for each violation of applicable laws, rules or conditions of licensure or registration, in accordance with the procedures established in section 90-A and any rules adopted by the board, take one or more of the following actions:

A. Issue warnings, censures or reprimands to a licensee. Each warning, censure or 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; [2001, c. 229, §4 (NEW).]

B. 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 each instance of actionable conduct or activity. Suspensions may be set to run concurrently or consecutively and may not exceed one year in total. 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 record; [2001, c. 229, §4 (NEW).]

C. Impose civil penalties of up to $1,500 for each violation of applicable laws, rules and conditions of licensure or for each instance of actionable conduct or activity; [2001, c. 229, §4 (NEW).]

D. Impose conditions of probation upon an applicant or licensee. Probation may run for that time period as the board, its subcommittee or staff 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 or licensee; and other conditions as the board, its subcommittee or staff determines appropriate. Costs incurred in the performance of terms of probation are borne by the applicant or licensee. Failure to comply with the conditions of probation is a ground for disciplinary action against a licensee; [2011, c. 271, §15 (AMD).]

E. 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 or licensee, the board, its subcommittee or staff and the Department of the Attorney General. Any remedy, penalty or fine or cost recovery that is otherwise available by law, even if only in the jurisdiction of the District Court, may be achieved by consent agreement, including long-term suspension and permanent revocation of a professional license. 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; or [2011, c. 271, §16 (AMD).]

F. Assess a licensee the costs of investigation and adjudicatory hearings relating to that licensee. [2011, c. 271, §17 (NEW).]

[2011, c. 271, §§15-17 (AMD) .]

4. **Authority to issue letters of guidance.** In addition to authority otherwise conferred, the board or, as delegated, its subcommittee or staff may issue a letter of guidance or concern to an applicant or licensee.

A. Letter 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 applicant 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, a letter of guidance or concern is not confidential. The board or, as delegated, its subcommittee or staff may place a letter of guidance or concern, together with any underlying complaint, report and investigation materials, in a licensee's or applicant'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 board, its subcommittee or staff in any subsequent action commenced against the applicant or licensee within the specified time frame. [2001, c. 229, §4 (NEW).]

[2001, c. 229, §4 (NEW) .]

SECTION HISTORY
1981, c. 661, §2 (NEW). 1983, c. 812, §§190,191 (AMD). 1985, c. 730, §§12,16 (AMD). 1987, c. 273, §5 (AMD). 1989, c. 503, §B120 (AMD). 1989, c. 857, §§70,71 (AMD). 1991, c. 588, §16 (AMD). 1991, c. 742, §4 (AMD). 1993, c. 575, §1 (AMD). 1995, c. 161, §9 (AMD). 1997, c. 644, §2 (AMD). 1999, c. 182, §§12-14 (AMD). 2001, c. 229, §4 (AMD). 2001, c. 713, §1 (AMD). 2007, c. 274, §§18-20 (AMD). 2009, c. 571, Pt. Y, §1 (AMD). 2011, c. 271, §§14-17 (AMD). 2013, c. 62, §1 (AMD).

§88-A. DIRECTOR'S DUTIES

In addition to other duties set out in this chapter, the director shall administer Maine Emergency Medical Services. With the knowledge and consent of the commissioner, the director shall oversee all personnel matters and, subject to the Civil Service Law, may hire personnel as required to enforce, implement and administer this chapter. [1991, c. 588, §17 (NEW).]

SECTION HISTORY
1991, c. 588, §17 (NEW).

§89. REGIONS AND REGIONAL COUNCILS

1. **Regions to be established; regional councils.** The board shall delineate regions within the State to carry out the purposes of this chapter. The board shall set out conditions under which an organization in each region may be recognized by the board as the regional council for that region. A regional council shall, at a minimum, provide adequate representation for ambulance and rescue services, emergency room physicians and nurses, hospitals and the general public. A regional council must be structured to adequately represent each major geographical part of its region. Only one regional council may be recognized in any region.

[2007, c. 274, §21 (AMD) .]

2. **Duties of regional councils.** Each regional council shall carry out an annual program, approved by the board, to further the goals specified in section 84, subsection 2. Specific responsibilities of the councils include, but are not limited to, the following:

A. Establishing a regional medical control committee; [1991, c. 588, §18 (AMD).]

B. Appointing, subject to approval by the board, a regional medical director, who must be a licensed physician qualified by training and experience and who serves as an agent of Maine Emergency Medical Services. The regional medical director may delegate in writing to other licensed physicians the responsibilities of this position; [2007, c. 274, §21 (AMD).]

C. [2007, c. 274, §21 (RP).]

D. [2007, c. 274, §21 (RP).]

E. [2007, c. 274, §21 (RP).]

F. Nominating 2 or more candidates from each region for a position on the Emergency Medical Services' Board, from whom the Governor may select a member; and [2007, c. 274, §21 (AMD).]

G. Establishing regional goals to carry out the provisions of this chapter. [1985, c. 739, §§13, 16 (NEW).]

[2007, c. 274, §21 (AMD) .]

SECTION HISTORY
1981, c. 661, §2 (NEW). 1985, c. 730, §§13,16 (AMD). 1989, c. 857, §72 (AMD). 1991, c. 588, §18 (AMD). 1995, c. 161, §10 (AMD). 1999, c. 182, §15 (AMD). 2007, c. 274, §21 (AMD).

§90. APPEALS

(REPEALED)

SECTION HISTORY
1981, c. 661, §2 (NEW). 1985, c. 730, §§13,16 (AMD). 1987, c. 273, §6 (RP).

§90-A. LICENSING ACTIONS

1. **Disciplinary proceedings and sanctions.** The board or, as delegated, its subcommittee or staff, 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 any rules adopted by the board. Investigation may include an informal conference before the board, its subcommittee or staff to determine whether grounds exist for suspension, revocation or denial of a license or for taking other disciplinary action pursuant to this chapter. The board, its subcommittee or staff may subpoena witnesses, records and documents, including records and documents maintained by a health care facility or other service organization or person related to the delivery of emergency medical services, in any investigation or hearing it conducts.

[2001, c. 229, §5 (AMD) .]

2. **Notice.** The board shall notify the licensee of the content of a complaint filed against the licensee as soon as possible, but in no event later than 60 days after the board or staff receives the initial pertinent information. The licensee has the right to respond within 30 days in all cases except those involving an emergency denial, suspension or revocation, as described in the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter 5. If the licensee's response to the complaint satisfies the board or staff 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.

[2003, c. 559, §2 (AMD) .]

3. **Informal conference.** If, in the opinion of the board, its subcommittee or staff, the factual basis of the complaint is or may be true and the complaint is of sufficient gravity to warrant further action, the board or staff 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, subcommittee or staff, 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 administrative or judicial hearing unless all parties consent. The licensee may, without prejudice, refuse to participate in an informal conference if the licensee prefers to request an adjudicatory hearing. If the licensee participates in the informal conference, the licensee waives the right to object to a participant at the hearing who participated at the informal conference.

[2003, c. 559, §2 (AMD) .]

4. **Further action.** If the board, its subcommittee or staff 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.

A. The board, its subcommittee or staff may negotiate a consent agreement with the licensee that fixes the period and terms of probation necessary 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 Department of the Attorney General. [2003, c. 559, §2 (AMD).]

B. If a licensee voluntarily surrenders a license, the board, its subcommittee or staff may negotiate stipulations necessary to ensure protection of the public health and safety and the rehabilitation or education of the licensee. These stipulations may be set forth only in a consent agreement signed by the board, the licensee and the Department of the Attorney General. [2001, c. 229, §7 (AMD).]

C. If the board, its subcommittee or staff concludes that modification, nonrenewal or suspension pursuant to section 88, subsection 3 of a license or imposition of a civil penalty pursuant to section 88, subsection 3 is in order, the board shall so notify the licensee and inform the licensee of the licensee's right to request an adjudicatory hearing. If the licensee requests an adjudicatory hearing in a timely manner, the adjudicatory hearing must be held by the board in accordance with Title 5, chapter 375, subchapter 4. If the licensee wishes to appeal the final decision of the board, the licensee shall file a petition for review with the Superior Court within 30 days of receipt of the board's decision. Review under this paragraph must be conducted pursuant to Title 5, chapter 375, subchapter 7. [2003, c. 559, §2 (AMD).]

D. Except in the specific circumstances where Title 5, section 10004 may be invoked, if the board or its staff concludes that suspension beyond the authority conferred by section 88 or revocation of the license is in order, the board or its staff shall request the Attorney General to file a complaint in the District Court in accordance with Title 4, chapter 5 and the Maine Administrative Procedure Act to commence either full or emergency proceedings. [2001, c. 229, §7 (AMD).]

[2003, c. 559, §2 (AMD) .]

5. **Grounds for licensing action.** A decision to take action against any applicant or licensee pursuant to this chapter or any rules adopted pursuant to this chapter, including, but not limited to, a decision to impose a civil penalty or to refuse to issue or renew a license or to modify, suspend or revoke a license of a person, service or vehicle, may be predicated on the following grounds:

A. Fraud or deceit in obtaining a license under this chapter or in connection with service rendered within the scope of the license issued; [1991, c. 588, §19 (AMD).]

B. [2007, c. 274, §22 (RP).]

B-1. The use of any drug, narcotic or substance that is illegal under state or federal law, or to the extent that the licensee's ability to provide emergency medical services or emergency medical dispatch services would be impaired; [2007, c. 274, §23 (NEW).]

B-2. A declaration of or claim pertaining to the licensee of legal incompetence that has not been legally terminated; [2007, c. 274, §24 (NEW).]

B-3. Any condition or impairment within the preceding 3 years, including, but not limited to, substance abuse, alcohol abuse or a mental, emotional or nervous disorder or condition, that in any way affects, or if untreated could impair, the licensee's ability to provide emergency medical services or emergency medical dispatch services; [2007, c. 274, §25 (NEW).]

C. [2007, c. 274, §26 (RP).]

D. Aiding or abetting the practice of emergency care by a person not duly licensed under this chapter who purports to be so; [1991, c. 588, §19 (AMD).]

E. Incompetent professional practice as evidenced by:

(1) Demonstrated inability to respond appropriately to a client, patient or the general public; or

(2) Inability to apply principles, skills or knowledge necessary to successfully carry out the practice for which the licensee is licensed; [1991, c. 588, §19 (AMD).]

F. Violation of any reasonable standard of professional behavior, conduct or practice that has been established in the practice for which the licensee is licensed; [1991, c. 588, §19 (AMD).]

G. Subject to the limitations of Title 5, chapter 341, conviction of a crime that involves dishonesty or false statement, conviction of a crime that relates directly to the practice for which the licensee is licensed, conviction of a crime for which incarceration for one year or more may be imposed or conviction of a crime defined in Title 17-A, chapter 11, 12 or 45; [2007, c. 274, §27 (AMD).]

H. Any violation of this chapter or any rule adopted by the board; or [1987, c. 273, §8 (NEW).]

I. For other purposes as specified by rules or law. [1987, c. 273, §8 (NEW).]

[2007, c. 274, §§22-27 (AMD) .]

SECTION HISTORY
1987, c. 273, §8 (NEW). 1991, c. 588, §19 (AMD). 1993, c. 575, §§2,3 (AMD). 1993, c. 600, §§A35,36 (AMD). 1999, c. 547, §B58 (AMD). 1999, c. 547, §B80 (AFF). 2001, c. 229, §§5-8 (AMD). 2003, c. 559, §2 (AMD). 2007, c. 274, §§22-27 (AMD).

§90-B. ADDRESS OF APPLICANT

Beginning on January 1, 2012, an applicant for a license or renewal of a license under this chapter shall provide the board with: [2011, c. 271, §18 (NEW).]

1. **Public record address.** A contact address, telephone number and e-mail address that the applicant is willing to have treated as a public record, such as a business address, business telephone number and business e-mail address; and

[2011, c. 271, §18 (NEW) .]

2. **Personal address.** The applicant's personal residence address, personal telephone number and personal e-mail address.

[2011, c. 271, §18 (NEW) .]

If the applicant is willing to have the applicant's personal residence address and telephone number and personal e-mail address treated as public records, the applicant shall indicate that in the application and is not required to submit a different address under subsection 1. [2011, c. 271, §18 (NEW).]

SECTION HISTORY
2011, c. 271, §18 (NEW).

§91. DISCIPLINARY ACTIONS

(REPEALED)

SECTION HISTORY
1985, c. 730, §§14,16 (NEW). 1987, c. 273, §7 (RP).

§91-A. APPEALS OF NONDISCIPLINARY ACTIONS AND REFUSALS TO ISSUE

Any person or organization aggrieved by the decision of the staff or a subcommittee of the board in taking any nondisciplinary action pursuant to this chapter or rules adopted pursuant to this chapter or in the interpretation of this chapter or rules adopted pursuant to this chapter or in refusing to issue a license may appeal the decision to the board for a final decision. The staff's or subcommittee's decision stands until the board issues a decision to uphold, modify or overrule the staff's or subcommittee's decision. In the case of nonrenewal, the person or organization must be afforded an opportunity for hearing in accordance with this chapter and the Maine Administrative Procedure Act. [2003, c. 559, §3 (AMD).]

A final decision of the board constitutes final agency action appealable pursuant to Title 5, chapter 375, subchapter 7. [2003, c. 559, §3 (AMD).]

SECTION HISTORY
1987, c. 273, §8 (NEW). 1991, c. 588, §20 (AMD). 2001, c. 229, §9 (RPR). 2003, c. 559, §3 (AMD).

§91-B. CONFIDENTIALITY EXCEPTIONS

1. **Confidentiality.** Except as otherwise provided in this chapter, all proceedings and records of proceedings concerning the quality assurance activities of an emergency medical services quality assurance committee approved by the board and all reports, information and records provided to the committee are confidential and may not be disclosed or obtained by discovery from the committee, the board or its staff. Quality assurance information may be disclosed to a licensee as part of any board-approved educational or corrective process. All complaints and investigative records of the board or any committee or subcommittee of the board are confidential during the pendency of an investigation and may not be disclosed by the committee, the board or its staff. Information or records that identify or permit identification of any patient that appears in any reports, information or records provided to the board or department for the purposes of investigation are confidential and may not be disclosed by the committee, the board or its staff.

A. A personal residence address, personal telephone number or personal e-mail address submitted to the board as part of any application under this chapter is confidential and may not be disclosed except as permitted under this section or as otherwise required by law unless the applicant who submitted the information indicated pursuant to section 90-B that the applicant is willing to have the applicant's personal residence address, personal telephone number or personal e-mail address treated as a public record. Personal health information submitted to the board as part of any application under this chapter is confidential and may not be disclosed except as otherwise permitted under this section or otherwise required by law.

The board and its committees and staff may disclose personal health information about and the personal residence address and personal telephone number of a licensee or an applicant for a license under this chapter to a government licensing or disciplinary authority or to a health care provider located within or outside this State that requests the information for the purposes of granting, limiting or denying a license or employment to the applicant or licensee. [2011, c. 271, §19 (NEW).]

B. Any materials or information submitted to the board in support of an application that are designated as confidential by any other provision of law remain confidential in the possession of the board. Information in any report or record provided to the board pursuant to this chapter that permits identification of a person receiving emergency medical treatment is confidential. [2011, c. 271, §19 (NEW).]

C. Information provided to the board under section 87-B is confidential if the information identifies or permits the identification of a trauma patient or a member of that patient's family. [2011, c. 271, §19 (NEW).]

D. Examination questions used by the board to fulfill the cognitive testing requirements of this chapter are confidential. [2011, c. 271, §19 (NEW).]

[2011, c. 271, §19 (NEW) .]

2. **Exceptions.** Information designated confidential under subsection 1 becomes a public record or may be released as provided in this subsection.

A. Confidential information may be released in an adjudicatory hearing or informal conference before the board or in any subsequent formal proceeding to which the confidential information is relevant. [2011, c. 271, §19 (NEW).]

B. Confidential information may be released in a consent agreement or other written settlement when the confidential information constitutes or pertains to the basis of board action. [2011, c. 271, §19 (NEW).]

C. Investigative records and complaints become public records upon the conclusion of an investigation unless confidentiality is required by some other provision of law. For purposes of this paragraph, an investigation is concluded when:

(1) Notice of an adjudicatory proceeding, as defined under Title 5, chapter 375, subchapter 1, has been issued;

(2) A consent agreement has been executed; or

(3) A letter of dismissal has been issued or the investigation has otherwise been closed. [2011, c. 271, §19 (NEW).]

D. During the pendency of an investigation, a complaint or investigative record may be disclosed:

(1) To Maine Emergency Medical Services employees designated by the director;

(2) To designated complaint officers of the board;

(3) By a Maine Emergency Medical Services employee or complaint officer designated by the board to the extent considered necessary to facilitate the investigation;

(4) To other state or federal agencies when the files contain evidence of possible violations of laws enforced by those agencies;

(5) By the director, to the extent the director determines such disclosure necessary to avoid imminent and serious harm. The authority of the director to make such a disclosure may not be delegated;

(6) When it is determined, in accordance with rules adopted by the department, that confidentiality is no longer warranted due to general public knowledge of the circumstances surrounding the complaint or investigation and when the investigation would not be prejudiced by the disclosure; or

(7) To the person investigated on request of that person. The director may refuse to disclose part or all of any investigative information, including the fact of an investigation, when the director determines that disclosure would prejudice the investigation. The authority of the director to make such a determination may not be delegated. [2011, c. 271, §19 (NEW).]

E. Data collected by Maine Emergency Medical Services that allows identification of persons receiving emergency medical treatment may be released for purposes of research, public health surveillance and linkage with patient electronic medical records if the release is approved by the board, the Medical Direction and Practices Board and the director. Information that specifically identifies individuals must be removed from the information disclosed pursuant to this paragraph, unless the board, the Medical Direction and Practices Board and the director determine that the release of such information is necessary for the purposes of the research. [2011, c. 271, §19 (NEW).]

F. Confidential information may be released in accordance with an order issued on a finding of good cause by a court of competent jurisdiction. [2011, c. 271, §19 (NEW).]

G. Confidential information may be released to the Office of the Chief Medical Examiner within the Office of the Attorney General. [2011, c. 271, §19 (NEW).]

[2011, c. 271, §19 (NEW) .]

3. **Violation.** A person who intentionally violates this section commits a civil violation for which a fine of not more than $1,000 may be adjudged.

[2011, c. 271, §19 (NEW) .]

SECTION HISTORY
2011, c. 271, §19 (NEW).

§92. CONFIDENTIALITY OF INFORMATION

(REPEALED)

SECTION HISTORY
1985, c. 730, §§14,16 (NEW). 1991, c. 588, §§21,22 (AMD). 2001, c. 229, §10 (AMD). 2003, c. 559, §§4,5 (AMD). 2011, c. 271, §20 (RP).

§92-A. RECORDS OF QUALITY ASSURANCE ACTIVITIES

1. **Immunity from suit.** Any person who participates in the activities of any emergency medical services quality assurance committee approved by the board is immune from civil liability for undertaking or failing to undertake any act within the scope of the committee.

[1991, c. 588, §23 (AMD) .]

2. **Confidentiality.**

[2011, c. 271, §21 (RP) .]

3. **Assistance of information; immunity.** Any person, health care facility or other emergency services organization which assists in the activities of an emergency medical services quality assurance committee approved by the board which provides information to an emergency medical services quality assurance committee approved by the board shall be protected by the provisions of section 93 as though that assistance of information were provided to the board itself.

[1989, c. 288, (NEW) .]

SECTION HISTORY
1989, c. 288, (NEW). 1991, c. 588, §23 (AMD). 2001, c. 229, §11 (AMD). 2003, c. 559, §6 (AMD). 2011, c. 271, §21 (AMD).

§92-B. DISCLOSURE OF CONFIDENTIAL INFORMATION TO THE BOARD

Notwithstanding any other provision of law, information that relates to a person licensed or certified by the board who is alleged to have engaged in any unlawful activity or professional misconduct or in conduct in violation of laws or rules relating to the board must be disclosed to the board and may be used by the board only in accordance with this chapter. [2007, c. 274, §28 (NEW).]

1. **Purpose for which disclosure is made.** Any confidential information provided to the board may be used only for investigative and other actions within the scope of the authority of the board and for determining whether the person licensed or certified by the board has engaged in unlawful activity, professional misconduct or an activity in violation of the laws or rules relating to the board.

[2007, c. 274, §28 (NEW) .]

2. **Designation of person to receive confidential information.** The director shall designate a person to receive confidential information for investigative purposes.

[2007, c. 274, §28 (NEW) .]

3. **Limitations on disclosure.** Disclosure is limited to information that is directly related to the matter at issue. The identity of reporters and other persons may not be disclosed except as necessary and relevant. Access to the information is limited to board investigators, parties to the matter at issue, parties' representatives, counsel of record, hearing officers and board members who are directly involved in the adjudicatory process. The information may be used only for the purpose for which the release was intended.

[2007, c. 274, §28 (NEW) .]

4. **Confidentiality at conclusion of investigation.** Except as provided in section 91-B, information received pursuant to this section remains confidential at the conclusion of an investigation.

[2011, c. 271, §22 (AMD) .]

SECTION HISTORY
2007, c. 274, §28 (NEW). 2011, c. 271, §22 (AMD).

§93. IMMUNITY

Any person, health care facility or other emergency services organization acting in good faith is immune from civil liability to the licensee or applicant for licensure for the following actions: [1991, c. 588, §24 (AMD).]

1. **Report; information.** Making any report or other information available to Maine Emergency Medical Services under this chapter; and

[1991, c. 588, §24 (AMD) .]

2. **Assisting.** Assisting Maine Emergency Medical Services in carrying out any of its duties.

[1991, c. 588, §24 (AMD) .]

SECTION HISTORY
1985, c. 730, §§14,16 (NEW). 1991, c. 588, §24 (AMD).

§93-A. IMMUNITY FOR SUPERVISION AND TRAINING

1. **Emergency medical treatment supervision.** No physician functioning within the medical control system established by the regional medical director and practicing in a hospital to or from which patients are transported under section 86 or health care practitioner under such a physician's supervision who gives oral or written instructions to a basic emergency medical services person or an advanced emergency medical technician for the provision of emergency medical treatment outside the hospital may be civilly liable for

negligence as a result of issuing the instructions, if the instructions were in accordance with the protocol for the patient's reported condition. For the purpose of aiding in establishing the use of a protocol that permits the immunity provided in this subsection, the following provisions apply:

A. The basic emergency medical services person or advanced emergency medical technician to whom the instructions are given shall document those instructions on the state ambulance run record; and [1987, c. 638, §2 (NEW).]

B. The physician or health care practitioner giving the instructions shall maintain a medical control log documenting those instructions at the time they were given and shall sign the log. [1987, c. 638, §2 (NEW).]

The immunity provided in this subsection extends to the hospital in which the physician described in this subsection is practicing or the health care practitioner described in this subsection is being supervised.

[1991, c. 588, §25 (AMD) .]

2. **Emergency medical services persons' training.** Except as otherwise provided in this subsection, no hospital, physician or health care practitioner providing an emergency medical services course, refresher course or continuing education course approved by Maine Emergency Medical Services may be vicariously liable for the civil liability of a person enrolled in the course to a person receiving emergency medical treatment during the course.

The immunity provided by this subsection does not apply if the person enrolled in the course is an employee of the hospital, physician or health care practitioner seeking immunity under this subsection.

[1991, c. 588, §25 (AMD) .]

SECTION HISTORY
1987, c. 638, §2 (NEW). 1991, c. 588, §25 (AMD).

§93-B. EPINEPHRINE TRAINING FUND

1. **Fund established.** The Epinephrine Training Fund, referred to in this section as "the fund," is established as an Other Special Revenue funds account and funds deposited to the fund are nonlapsing. The commissioner may use this fund only to purchase epinephrine autoinjectors and to support the costs associated with training basic emergency medical technicians to administer epinephrine.

[2003, c. 451, Pt. TT, §1 (NEW) .]

2. **Revenue sources.** The commissioner may accept private and public contributions intended to be used for the purposes of the fund.

[2003, c. 451, Pt. TT, §1 (NEW) .]

3. **Budget.** The commissioner shall submit a budget for the fund for each biennium pursuant to Title 5, sections 1663 and 1666.

[2003, c. 451, Pt. TT, §1 (NEW) .]

SECTION HISTORY
2003, c. 451, §TT1 (NEW).

§93-C. LIABILITY INSURANCE

1. **Procurement of coverage.** An ambulance service may not be required to procure liability insurance coverage that exceeds the liability limits specified in Title 14, sections 8104-D and 8105 while acting as an emergency medical service as defined in Title 14, section 8102, subsection 1-A.

[2005, c. 398, §2 (NEW) .]

2. **Coverage required by insurer.** An insurer providing insurance to an ambulance service may not require coverage that exceeds the liability limits specified in subsection 1.

[2005, c. 398, §2 (NEW) .]

SECTION HISTORY
2005, c. 398, §2 (NEW).

§94. SUNSET

The operations and conduct of Maine Emergency Medical Services must be reviewed in accordance with Title 3, chapter 35. [2005, c. 397, Pt. A, §40 (AMD).]

SECTION HISTORY
1985, c. 730, §§14,16 (NEW). 1991, c. 588, §26 (AMD). 1995, c. 488, §4 (AMD). 2005, c. 397, §A40 (AMD).

§95. AUTHORIZE TO PARTICIPATE

Notwithstanding section 91-B, Maine Emergency Medical Services is authorized to participate in and share information with the National Emergency Medical Services Information System. [2011, c. 271, §23 (AMD).]

SECTION HISTORY
2007, c. 274, §29 (NEW). 2011, c. 271, §23 (AMD).

Chapter 3: ARCHITECTS

Subchapter 1: GENERAL PROVISIONS

§101. SAVING CLAUSE

(REPEALED)

SECTION HISTORY
1977, c. 463, §2 (RP).

§102. EXCEPTIONS

(REPEALED)

SECTION HISTORY
1975, c. 123, §1 (AMD). 1977, c. 463, §2 (RP).

§103. ENFORCEMENT

(REPEALED)

SECTION HISTORY
1977, c. 463, §2 (RP).

§104. PENALTIES

(REPEALED)

SECTION HISTORY
1977, c. 463, §2 (RP).

Subchapter 2: BOARD OF REGISTRATION

§151. BOARD OF REGISTRATION FOR ARCHITECTS

(REPEALED)

SECTION HISTORY
1975, c. 123, §2 (AMD). 1975, c. 575, §4 (AMD). 1975, c. 770, §180 (AMD). 1975, c. 771, §332 (AMD). 1977, c. 78, §177 (AMD). 1977, c. 463, §2 (RP).

§152. QUALIFICATIONS FOR MEMBERS

(REPEALED)

SECTION HISTORY
1975, c. 123, §3 (AMD). 1975, c. 575, §5 (AMD). 1975, c. 770, §181 (RPR). 1977, c. 463, §2 (RP).

§153. ORGANIZATION; MEETINGS; QUORUM; SEAL

(REPEALED)

SECTION HISTORY

1975, c. 123, §§4, 5 (AMD). 1975, c. 575, §6 (AMD). 1977, c. 463, §2 (RP).

§154. POWERS AND DUTIES

(REPEALED)

SECTION HISTORY
1975, c. 123, §6 (AMD). 1977, c. 463, §2 (RP).

§155. REMOVAL OF MEMBERS; VACANCIES

(REPEALED)

SECTION HISTORY
1975, c. 575, §7 (AMD). 1975, c. 771, §333 (AMD). 1977, c. 463, §2 (RP).

§156. RECORDS

(REPEALED)

SECTION HISTORY
1977, c. 463, §2 (RP).

§157. REPORTS

(REPEALED)

SECTION HISTORY
1977, c. 463, §2 (RP).

§158. HEARINGS

(REPEALED)

SECTION HISTORY
1977, c. 463, §2 (RP).

Subchapter 3: REGULATION OF ARCHITECTS

§201. UNREGISTERED PERSONS FORBIDDEN TO PRACTICE ARCHITECTURE

(REPEALED)

SECTION HISTORY
1975, c. 123, §7 (AMD). 1977, c. 463, §2 (RP).

§202. QUALIFICATIONS

(REPEALED)

SECTION HISTORY
1975, c. 123, §§8-10 (AMD). 1977, c. 404, (AMD). 1977, c. 463, §2 (RP). 1977, c. 564, §118-F (AMD).

§203. EXAMINATIONS

(REPEALED)

SECTION HISTORY
1977, c. 463, §2 (RP).

§204. FEES

(REPEALED)

SECTION HISTORY
1975, c. 123, §§11-14 (AMD). 1977, c. 463, §2 (RP).

§205. REGISTRATION WITHOUT EXAMINATION

(REPEALED)

SECTION HISTORY
1975, c. 123, §15 (AMD). 1977, c. 463, §2 (RP).

§206. CERTIFICATES

(REPEALED)

SECTION HISTORY
1977, c. 463, §2 (RP).

§207. REVOCATION OF CERTIFICATE; SUSPENSION

(REPEALED)

SECTION HISTORY
1975, c. 123, §16 (RP). 1977, c. 463, §2 (RP).

§208. SEAL

(REPEALED)

SECTION HISTORY
1977, c. 463, §2 (RP).

Chapter 3-A: ARCHITECTS, LANDSCAPE ARCHITECTS AND INTERIOR DESIGNERS

Subchapter 1: BOARD OF LICENSURE
HEADING: PL 1987, C. 395, PT. A, §107 (RPR)

§210. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2007, c. 402, Pt. F, §1 (NEW).]

1. **Board.** "Board" means the Maine State Board for Licensure of Architects, Landscape Architects and Interior Designers.

[2007, c. 402, Pt. F, §1 (NEW) .]

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

[2007, c. 402, Pt. F, §1 (NEW) .]

3. **Office.** "Office" means the Office of Professional and Occupational Regulation within the department.

[2007, c. 402, Pt. F, §1 (NEW); 2011, c. 286, Pt. B, §5 (REV) .]

SECTION HISTORY
2007, c. 402, Pt. F, §1 (NEW). 2011, c. 286, Pt. B, §5 (REV).

§211. MEMBERSHIP; TERM

The Maine State Board for Licensure of Architects, Landscape Architects and Interior Designers, established by Title 5, section 12004-A, subsection 4, shall administer this chapter. The board consists of 9 members appointed by the Governor: Five must be licensed and practicing architects, one of whom may be a professor of architecture; one must be a licensed and practicing landscape architect; one must be a certified and practicing interior designer and 2 must be public members as defined by Title 5, section 12004-A. [2007, c. 402, Pt. F, §2 (AMD).]

Appointments are for 3-year terms. Appointments of members must comply with the provisions of Title 10, section 8009. A member may be removed by the Governor for cause. [2007, c. 402, Pt. F, §2 (AMD).]

SECTION HISTORY
1977, c. 463, §3 (NEW). 1977, c. 564, §118-G (AMD). 1983, c. 413, §3 (RPR). 1983, c. 812, §192 (AMD). 1987, c. 395, §A108 (AMD). 1989, c. 503, §B121 (AMD). 1991, c. 396, §§3,4 (AMD). 1993, c. 389, §5 (AMD). 1993, c. 600, §A37 (AMD). 1999, c. 687, §E2 (AMD). 2007, c. 402, Pt. F, §2 (AMD).

§212. QUALIFICATIONS FOR MEMBERS

Each member of the board must be a resident of this State and in the case of architect, landscape architect or interior designer members must be currently licensed or certified by the State and have engaged in the independent practice of architecture, landscape architecture or interior design in the State for at least 5 years immediately prior to appointment. The member who may be a professor of architecture in a college or

university of this State must have combined experience in practice and teaching of not less than 5 years, at least 2 of which must have been in the active practice of architecture as a profession. [2007, c. 402, Pt. F, §3 (AMD).]

SECTION HISTORY
1977, c. 463, §3 (NEW). 1991, c. 396, §5 (AMD). 1993, c. 389, §6 (AMD). 2007, c. 402, Pt. F, §3 (AMD).

§213. MEETINGS; CHAIR

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. [2013, c. 246, Pt. B, §3 (AMD).]

SECTION HISTORY
1977, c. 463, §3 (NEW). 1977, c. 694, §§540,541 (AMD). 1983, c. 413, §4 (RPR). 1987, c. 395, §A109 (AMD). 1993, c. 389, §7 (AMD). 1999, c. 687, §E3 (AMD). 2007, c. 402, Pt. F, §4 (AMD). 2013, c. 246, Pt. B, §3 (AMD).

§213-A. COMPENSATION

(REPEALED)

SECTION HISTORY
1983, c. 413, §5 (NEW). 1983, c. 812, §193 (RPR). 1991, c. 396, §§6,7 (AMD). 1995, c. 397, §21 (RP).

§214. POWERS AND DUTIES

The board shall administer, coordinate and enforce this chapter and have the following powers and duties in addition to those otherwise set forth in this chapter. [1983, c. 214, §6 (RPR).]

1. **Rules.** The board may, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter II, adopt rules commensurate with the authority vested in it by this chapter. The rules may include rules necessary for the performance of the duties of the board in carrying out the purposes of this chapter, as well as such rules as are appropriate to establish and maintain high standards of ethical conduct. These rules shall include, but not be limited to, rules concerning misconduct, compensation, fee splitting, advertising and standards of workmanship.

[1983, c. 413, §6 (NEW) .]

2. **Hearings.**

[2007, c. 402, Pt. F, §5 (RP) .]

3. **Contracts.**

[1995, c. 397, §22 (RP) .]

4. **Legal services.**

[2007, c. 402, Pt. F, §6 (RP) .]

SECTION HISTORY

1977, c. 463, §3 (NEW). 1977, c. 694, §§542,543 (AMD). 1983, c. 413, §6 (RPR). 1987, c. 395, §A110 (AMD). 1993, c. 389, §8 (AMD). 1995, c. 397, §22 (AMD). 2007, c. 402, Pt. F, §§5, 6 (AMD).

§215. REMOVAL OF MEMBER; VACANCIES

(REPEALED)

SECTION HISTORY
1977, c. 463, §3 (NEW). 1977, c. 564, §118H (RPR). 1983, c. 413, §7 (RP).

§216. RECORDS

(REPEALED)

SECTION HISTORY
1977, c. 463, §3 (NEW). 1983, c. 413, §8 (RPR). 1987, c. 395, §A111 (AMD). 1991, c. 396, §8 (AMD). 1993, c. 389, §9 (AMD). 2007, c. 402, Pt. F, §7 (RP).

§217. REPORTS

(REPEALED)

SECTION HISTORY
1977, c. 463, §3 (NEW). 1977, c. 604, §7 (AMD). 1987, c. 395, §A112 (AMD). 2007, c. 402, Pt. F, §8 (RP).

§217-A. LIAISON; LIMITATIONS

(REPEALED)

SECTION HISTORY
1977, c. 604, §8 (NEW). 1983, c. 758, §2 (AMD). 1991, c. 396, §9 (RP).

§217-B. BUDGET

(REPEALED)

SECTION HISTORY
1977, c. 604, §8 (NEW). 1983, c. 553, §46 (AMD). 1983, c. 758, §3 (AMD). 1987, c. 395, §A113 (AMD). 1995, c. 397, §23 (RP).

§217-C. EMPLOYEES

(REPEALED)

SECTION HISTORY
1991, c. 396, §10 (NEW). 1995, c. 397, §24 (RP).

§218. DENIAL OR REFUSAL TO RENEW LICENSE; DISCIPLINARY ACTION

The board may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A for any of the reasons enumerated in Title 10, section 8003, subsection 5-A, paragraph A. [2007, c. 402, Pt. F, §9 (RPR).]

SECTION HISTORY
1977, c. 463, §3 (NEW). 1977, c. 694, §544 (RPR). 1983, c. 413, §9 (RPR). 1987, c. 395, §A114 (AMD). 1993, c. 389, §10 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 402, Pt. F, §9 (RPR).

Subchapter 2: REGULATION OF ARCHITECTS, LANDSCAPE ARCHITECTS AND INTERIOR DESIGNERS HEADING: PL 1993, C. 389, §11 (RPR)

§220. LICENSING REQUIREMENTS

1. Architects.

A. A person may not practice architecture or profess to practice architecture inside the State or use the title or profess to be an "architect" or "licensed architect" or display or use any words, letters, figures, titles, sign, card advertisement or other symbol or device indicating or tending to indicate that the person is an architect or is practicing architecture, or sign technical submissions unless the person is duly licensed by the board.

As used in this chapter, the practice of architecture consists of rendering or offering to render service to clients by consultations, investigations, technical submissions and a coordination of structural factors concerning the aesthetic or structural design and administration of construction contracts or any other service in connection with the designing or administration of construction contracts for buildings located inside the State that have as their principal purpose human occupancy or habitation, regardless of whether the persons are performing one or all of these duties, or whether they are performed in person or as the directing head of an office or organization performing them.

As used in this chapter, the term "technical submissions" includes the preliminary studies, plans, designs, drawings, specifications and contract documents, as well as other documents, prepared in the course of practicing architecture or landscape architecture.

The practice of architecture does not include the practice of landscape architecture as defined in this chapter. A licensed architect may do landscape architectural work as is incidental to the architect's work. [2007, c. 402, Pt. F, §10 (AMD).]

B. Qualifications.

(1) To be qualified for admission to the examination to practice architecture in this State an applicant must submit evidence to the board that:

(a) The applicant has completed a course of study in a school or college of architecture approved by the board, with graduation evidenced by a diploma setting forth a satisfactory degree, and 3 years of practical experience under the supervision of an experienced architect or architects engaged in the practice of architecture as a profession; or

(b) The applicant has training or practical experience, or a combination of both, that in the opinion of the board is fully equivalent to that required in division (a).

(2) An applicant for licensure as an architect in this State who has a current and valid license from another jurisdiction and a certificate from the National Council of Architectural Registration Boards or its successor or other organization approved by the board may offer to render architectural services in this State prior to licensure by the board if the applicant first notifies the board in writing

that the applicant will be present in this State to offer to render architectural services. The applicant may not render architectural services until duly licensed by the board. [2007, c. 402, Pt. F, §11 (AMD).]

C. [2013, c. 217, Pt. C, §1 (RP).]

[2013, c. 217, Pt. C, §1 (AMD) .]

2. **Landscape architects.** Landscape architects are subject to the provisions of this section.

A. A person may not use the title "landscape architect" or profess to be a landscape architect or sign drawings or specifications as a landscape architect unless that person is duly licensed by the board.

As used in this chapter, the practice of landscape architecture consists of rendering or offering to render services to clients by consultations, investigations, technical submissions and administration of construction contracts for the purposes of public land development and enhancement projects involving site vehicular access and circulation, multi-vehicle parking areas, grading and drainage of such ways and areas and site grading that results in drainage flows that exceed the previously existing drainage capacity, when such project submissions require the stamp or seal of a licensed professional for permit or approval by a municipal land ordinance, site plan ordinance, zoning ordinance or state land development law. These services must apply artistic and scientific principles to the research, planning, design and management of both natural and built environments.

Practitioners of landscape architecture may collaborate in the design of buildings, roads, bridges and other structures with respect to the functional and aesthetic requirements of the landscape in which they are to be placed.

The practice of landscape architecture does not include the practice of architecture as defined in this chapter. A licensed landscape architect may do such architectural work as is incidental to the landscape architect's work.

A person licensed as a landscape architect pursuant to this subsection is entitled to practice within the scope of that person's knowledge, skill and abilities. This subsection may not be construed to affect or prevent the practice of architecture, engineering or any other legally recognized profession. [2007, c. 390, §1 (RPR).]

B. A landscape architect must meet the qualifications established in this paragraph.

(1) To be qualified for admission to the examination to practice landscape architecture in this State, an applicant must submit evidence that:

(a) The applicant has completed a course of study in a school or college of landscape architecture approved by the board, with graduation evidenced by a diploma setting forth a satisfactory degree and 2 years of practical experience in landscape architectural work of a grade and character satisfactory to the board; or

(b) The applicant has training or practical experience, or a combination of both, that in the opinion of the board is fully equivalent to that required in division (a).

(2) An applicant for licensure as a landscape architect in this State who has a current and valid license from another jurisdiction and a certificate from a recognized council of landscape architectural registration boards may offer to render landscape architectural services in the State prior to licensure by the board as long as the applicant first notifies the board in writing that the applicant will be present in the State to offer to render landscape architectural services. The applicant may not render landscape architectural services until duly licensed by the board.

(3) An applicant for renewal of a license issued pursuant to this section shall submit evidence that the applicant meets the qualifications established by the board. [2009, c. 415, Pt. A, §16 (RPR).]

C. [2013, c. 217, Pt. C, §2 (RP).]

[2013, c. 217, Pt. C, §2 (AMD) .]

SECTION HISTORY
1977, c. 463, §3 (NEW). 1977, c. 564, §§118I,118J (AMD). 1987, c. 395, §A115 (AMD). RR 1991, c. 1, §44 (COR). 1991, c. 396, §11 (AMD). 1991, c. 824, §§A63,64 (AMD). 2007, c. 390, §1 (AMD). 2007, c. 402, Pt. F, §§10-12 (AMD). 2009, c. 415, Pt. A, §16 (AMD). 2013, c. 217, Pt. C, §§1, 2 (AMD).

§220-A. APPLICATION

(REPEALED)

SECTION HISTORY
1987, c. 395, §A116 (NEW). 1989, c. 857, §73 (AMD). 2007, c. 402, Pt. F, §13 (RP).

§220-B. USE OF THE TITLE "INTERIOR DESIGNER"; QUALIFICATIONS; GRANDFATHERING

1. **Use of title.** A person may not use the title "certified interior designer" unless licensed under this chapter. This chapter does not prohibit a person from providing interior design services or from using the title "interior designer."

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

A. "Certified interior designer" means an interior designer who has been licensed by the board in accordance with this chapter. [2007, c. 402, Pt. F, §14 (AMD).]

B. "Interior designer" means an individual who provides or offers to provide interior design services. [1993, c. 389, §12 (NEW).]

C. "Interior design services" means services that do not require the services of a licensed architect or engineer and that involve the preparation of working drawings, plans and specifications relative to building elements that are not necessary for the structural stability and mechanical and electrical integrity of the construction. [1993, c. 389, §12 (NEW).]

[2007, c. 402, Pt. F, §14 (AMD) .]

2. **Qualifications.** The following are the qualifications for licensure as an interior designer.

A. Except as otherwise provided in this chapter, each applicant for licensure must provide to the board proof of passage of the examination administered by the National Council for Interior Design Qualification or its successor organization or an equivalent examination as specified by the board. [2007, c. 402, Pt. F, §14 (AMD).]

B. In addition to proof of passage of the examination, the applicant must provide substantial evidence to the board that the applicant:

(1) Is a graduate of a 5-year interior design program from an accredited institution and has completed at least one year of diversified and appropriate interior design experience;

(2) Is a graduate of a 4-year interior design program from an accredited institution and has completed at least 2 years of diversified and appropriate interior design experience; [1993, c. 389, §12 (NEW).]

[2007, c. 402, Pt. F, §14 (AMD) .]

3. **Accreditation.** All interior design programs must be accredited by the Foundation of Interior Design Education Research, or its successor organization, or be determined by the board to be substantially equivalent to the accredited program.

[1993, c. 389, §12 (NEW) .]

4. **Grandfathering.**

[2007, c. 402, Pt. F, §14 (RP) .]

5. **Repeal.**

[2007, c. 402, Pt. F, §14 (RP) .]

SECTION HISTORY
1993, c. 389, §12 (NEW). 2007, c. 402, Pt. F, §14 (AMD). MRSA T.32 ., §220B/5 (AMD).

§220-C. LICENSE LIMITED TO INDIVIDUALS

A license under this subchapter may be issued only to an individual, and licensure must be determined on individual and personal qualifications. A firm, corporation, company, partnership or limited liability company may not be licensed under this chapter. [2013, c. 217, Pt. C, §3 (NEW).]

SECTION HISTORY
2013, c. 217, Pt. C, §3 (NEW).

§221. EXAMINATIONS

Examinations must consist of such technical and professional subjects and oral questioning as the board may from time to time prescribe. The rules for the manner in which examinations are conducted and the content of the examination must be adopted in accordance with the Maine Administrative Procedure Act, Title 5, section 8051, et seq. [2007, c. 402, Pt. F, §15 (AMD).]

SECTION HISTORY
1977, c. 463, §3 (NEW). 1977, c. 694, §§545,546 (AMD). 1987, c. 395, §A117 (AMD). 1993, c. 389, §13 (AMD). 2007, c. 402, Pt. F, §15 (AMD).

§222. FEES

The director of the office may establish by rule fees for purposes authorized under this chapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for any one purpose may not exceed $200. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2007, c. 402, Pt. F, §16 (RPR).]

SECTION HISTORY
1977, c. 463, §3 (NEW). 1977, c. 694, §547 (AMD). 1983, c. 413, §10 (AMD). 1987, c. 395, §A118 (AMD). 1991, c. 396, §§12-16 (AMD). 1993, c. 389, §14 (AMD). 2007, c. 402, Pt. F, §16 (RPR).

§223. LICENSURE WITHOUT EXAMINATION

(REPEALED)

SECTION HISTORY
1977, c. 463, §3 (NEW). 1987, c. 395, §A119 (AMD). 1991, c. 396, §17 (RP).

§223-A. LICENSURE WITHOUT EXAMINATION

A license may be issued without an examination under any one of the following conditions. [1991, c. 396, §18 (NEW).]

1. **Certification by National Council of Architectural Registration Boards.** An architect license may be issued without examination to an applicant who has a current and valid certificate of licensure from another state and a current and valid certificate from the National Council of Architectural Registration Boards or its successor or other organization approved by the board. The applicant must file an application for licensure with the board.

[2007, c. 402, Pt. F, §17 (AMD) .]

2. **Architect licensure from other jurisdictions.** An architect license may be issued without examination to an applicant who holds a current and valid license from another jurisdiction provided the requirements for the license are determined equivalent to requirements for licensure by examination in this State and the applicant submits other evidence of ability as may be required by the board.

[1991, c. 396, §18 (NEW) .]

3. **Certification by Council of Landscape Architectural Registration Boards.** A landscape architect license may be issued without examination to an applicant who has passed a standard examination and received certification by the Council of Landscape Architectural Registration Boards and provides the board further evidence of continued honorable professional conduct after passing the examination.

[1991, c. 396, §18 (NEW) .]

4. **Landscape architect licensure from other jurisdictions.** A landscape architect license may be issued without examination to an applicant who holds a current and valid license from another jurisdiction provided the requirements for the license are determined equivalent to the requirements for licensure by examination in this State and the applicant submits other evidence of ability as may be required by the board.

[1991, c. 396, §18 (NEW) .]

SECTION HISTORY
1991, c. 396, §18 (NEW). 2007, c. 402, Pt. F, §17 (AMD).

§223-B. CERTIFICATION BY RECIPROCITY

A license may be issued by the board without further examination requirements for an individual who provides proof of passage of the examination administered by the National Council for Interior Design Qualification, or its successor organization, or an equivalent exam as determined by the board or who is licensed or certified as an interior designer in another state if that state's requirements are substantially equivalent to those required for a license in the State. [2007, c. 402, Pt. F, §18 (AMD).]

SECTION HISTORY
1993, c. 389, §15 (NEW). 2007, c. 402, Pt. F, §18 (AMD).

§224. LICENSE

The board shall issue a license upon payment of the fee as set under section 222 to any applicant who has satisfactorily met all the requirements of this chapter. [2007, c. 402, Pt. F, §19 (AMD).]

Issuance of a license by the board is evidence that the person named therein is entitled to all the rights and privileges of a licensed architect, licensed landscape architect or certified interior designer while the license remains unexpired and unrevoked. [2007, c. 402, Pt. F, §19 (AMD).]

Licenses expire on the last day of June of each year or any other time the Commissioner of Professional and Financial Regulation may designate. A license may be renewed up to 90 days after the date of its expiration upon payment of a late fee in addition to the renewal fee as set under section 222. Any person who submits an application for renewal more than 90 days after the license expiration date 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 the renewal application is received, together with the late fee, renewal fee and additional late fee as set under section 222, within 2 years from the date of the expiration. [2007, c. 402, Pt. F, §19 (AMD).]

SECTION HISTORY
1977, c. 463, §3 (NEW). 1977, c. 694, §548 (AMD). 1983, c. 413, §11 (AMD). 1987, c. 395, §A120 (AMD). 1991, c. 396, §19 (AMD). 2007, c. 402, Pt. F, §19 (AMD).

§224-A. CERTIFICATE; EXPIRATION AND RENEWAL

(REPEALED)

SECTION HISTORY
1993, c. 389, §15 (NEW). 2007, c. 402, Pt. F, §20 (RP).

§225. SEAL

Each licensed architect or landscape architect shall upon licensure obtain a seal of such design as the board authorizes and directs. Technical submissions prepared by or under the direct supervision of a licensed architect or under the direct supervision of a licensed landscape architect must be stamped with the seal during the life of the licensee's license. It is unlawful for anyone to stamp or seal any documents with the seal after the license named on the seal has expired or has been revoked, unless the license has been renewed or reissued. [2013, c. 217, Pt. C, §4 (AMD).]

As used in this section, "direct supervision of a technical submission" means that the supervising licensee has personal knowledge of the technical submission and direct knowledge of involvement with and control over preparation of the technical submission, provided that persons consulting with or employed by the licensee who are licensed in this State under any other provision of law may provide direct supervision of portions of the technical submission. Those portions are determined to be under the direct supervision of the licensee if the licensee has reviewed those portions, coordinated their preparation and is responsible for their adequacy. [1991, c. 396, §20 (NEW).]

SECTION HISTORY
1977, c. 463, §3 (NEW). 1987, c. 395, §A121 (AMD). 1991, c. 396, §20 (AMD). 2007, c. 402, Pt. F, §21 (AMD). 2013, c. 217, Pt. C, §4 (AMD).

§225-A. CERTIFIED SIGNATURE

1. **Signature required.** A drawing plan, specification or report prepared or issued by a certified interior designer and being filed for public record must bear the signature of the interior designer who prepared or approved the document, accompanied by a certification that the signer is licensed under this chapter, by the person's license number and by the date on which the signature was affixed.

[2007, c. 402, Pt. F, §22 (AMD) .]

2. **Competency.** A certified interior designer may not sign a plan, specification, drawing or other document that depicts work that the person is not competent or licensed to perform.

[2007, c. 402, Pt. F, §23 (AMD) .]

3. **Supervising control.** A certified interior designer may not affix a signature to a plan, specification or other document that was not prepared by that person or under that person's responsible supervising control or by another interior designer and reviewed, approved or modified and adopted by the person as that person's own work according to the rules adopted by the board.

[1993, c. 389, §15 (NEW) .]

4. **Document standards.** Studies, drawings, specifications and other related documents prepared by a certified interior designer in providing interior design services must be of a sufficiently high standard to clearly and accurately indicate all essential parts of the work to which they refer.

[1993, c. 389, §15 (NEW) .]

SECTION HISTORY
1993, c. 389, §15 (NEW). 2007, c. 402, Pt. F, §§22, 23 (AMD).

§226. EXCEPTIONS

1. **Practices excepted.** Nothing in this chapter may be construed to affect or prevent the practice of:

A. Supervision by builders or superintendents employed by those builders of the installation of architectural or landscape architectural projects; [1991, c. 396, §21 (RPR).]

B. Marine or naval architects acting within the scope of their profession or occupation; [1991, c. 396, §21 (RPR).]

C. Officers or employees of the Federal Government engaged inside the State in the practice of architecture for the Federal Government; [1991, c. 396, §21 (RPR).]

D. Any person in the regular employment of a public utility carrying out work incidental to the person's employment; [1991, c. 396, §21 (RPR).]

E. Any person who is qualified under section 1251 to use the title "professional engineer" from performing any professional engineering service as authorized in section 1251. Such service includes, but is not limited to consultation, investigation, evaluation, planning, design and responsible supervision and administration of construction contracts in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works or projects, and technical submissions, provided the person does only architectural or landscape architectural work that is incidental to the person's engineering work; [1991, c. 874, §2 (RPR).]

F. Officers or employees of the Federal Government or State Government using the title "transportation landscape architect" in the practice of landscape architecture in connection with their governmental employment; [1991, c. 396, §21 (NEW).]

G. The preparation of details and shop drawings, or job-specific interpretations of technical submissions by architects, by persons other than architects, for use in connection with the execution of their work; [1993, c. 389, §16 (AMD).]

H. Employees of those practicing lawfully as architects under this chapter from acting under the instructions, control or supervision of their employers; and [1993, c. 389, §16 (AMD).]

I. A person who is qualified under this chapter to use the title "certified interior designer" from performing any interior design services. [1993, c. 389, §17 (NEW).]

[1993, c. 389, §§16,17 (AMD) .]

2. Technical submissions; construction or development. Nothing in this chapter may be construed to prevent any person from preparing technical submissions for, or administering construction contracts in, the erection, construction or development of:

A. Detached single or 2-family dwellings, including those to be utilized for home occupations, as defined by local ordinances, and sheds, storage buildings and garages incidental to the dwellings; [1991, c. 874, §3 (AMD).]

B. Farm buildings, including barns, silos, sheds or housing for farm equipment and machinery, livestock, poultry or storage, if the structures are designed to be occupied by no more than 10 persons; [1991, c. 874, §3 (AMD).]

C. Alterations, renovations or remodeling of a building when the cost of the work contemplated by the design does not exceed 15% of the assessed value of the building or $50,000, whichever is the lesser, or does not require the issuance of a permit under applicable building codes or when the work involves those structures as provided in paragraphs A, B, F, G and H or when the work involves interior design services performed by a certified interior designer; [1993, c. 680, Pt. A, §28 (RPR).]

D. [1991, c. 396, §21 (RP).]

E. [1991, c. 396, §21 (RP).]

F. Buildings that do not have as their principal purpose human occupancy or habitation; [1991, c. 874, §4 (NEW).]

G. Single-story, above-grade buildings of less than 1,000 square feet that are designed to be occupied by no more than 10 persons; and [1991, c. 874, §4 (NEW).]

H. Preengineered manufactured buildings. For the purposes of this section, "preengineered manufactured building" means a structural unit, other than a dwelling, that is designed by a person licensed as an engineer in the State and is constructed in a manufacturing facility. [1991, c. 874, §4 (NEW).]

[1993, c. 680, Pt. A, §28 (AMD) .]

SECTION HISTORY
1977, c. 463, §3 (NEW). 1991, c. 396, §21 (RPR). 1991, c. 874, §§2-4 (AMD). 1993, c. 349, §65 (AMD). 1993, c. 389, §§16-18 (AMD). 1993, c. 680, §A28 (AMD).

§227. ENFORCEMENT

(REPEALED)

SECTION HISTORY
1977, c. 463, §3 (NEW). 2007, c. 402, Pt. F, §24 (RP).

§228. PENALTIES

A person who violates section 220, subsection 1 or 2 or section 220-B, subsection 1 is subject to the provisions of Title 10, section 8003-C. [2007, c. 402, Pt. F, §25 (AMD).]

SECTION HISTORY
1977, c. 463, §3 (NEW). 1983, c. 413, §12 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2001, c. 421, §B93 (AMD). 2001, c. 421, §C1 (AFF). 2007, c. 402, Pt. F, §25 (AMD).

Chapter 5: AUCTIONEERS SECTIONS 251 TO 261

§251. RESIDENT LICENSE

(REPEALED)

SECTION HISTORY
1965, c. 222, §§1,2 (AMD). 1969, c. 433, §77 (AMD). 1971, c. 598, §67 (AMD). 1975, c. 27, §1 (AMD). 1977, c. 273, §3 (AMD). 1979, c. 478, §1 (RP). 1979, c. 562, §16 (AMD). 1979, c. 663, §206 (AMD).

§252. NONRESIDENT AUCTIONEERS; DEPOSIT; FEES

(REPEALED)

SECTION HISTORY
1965, c. 222, §3 (AMD). 1977, c. 273, §§4,5 (AMD). 1979, c. 478, §1 (RP).

§253. STATE LICENSE; APPLICATION

(REPEALED)

SECTION HISTORY
1977, c. 273, §6 (AMD). 1979, c. 478, §1 (RP).

§254. REVOCATION OR SUSPENSION; APPEAL

(REPEALED)

SECTION HISTORY
1975, c. 27, §2 (AMD). 1977, c. 273, §7 (AMD). 1979, c. 478, §1 (RP).

§255. APPLICATION FOR LOCAL LICENSE; FEE

(REPEALED)

SECTION HISTORY
1977, c. 273, §8 (AMD). 1979, c. 478, §1 (RP). 1979, c. 562, §§17,18 (AMD). 1979, c. 663, §§207,208 (AMD).

§256. LIMITATION ON SALE OF PROPERTY

(REPEALED)

SECTION HISTORY
1979, c. 478, §1 (RP).

§257. ACTION AGAINST NONRESIDENT LICENSEE; REVOCATION OF LICENSE

(REPEALED)

SECTION HISTORY
1977, c. 273, §9 (AMD). 1979, c. 478, §1 (RP).

§258. RETURN OF BOND OR CASH SECURITY; LIMITATION OF ACTION

(REPEALED)

SECTION HISTORY
1977, c. 273, §10 (AMD). 1979, c. 478, §1 (RP).

§259. BLOODED ANIMALS MAY BE SOLD WITHOUT STATE LICENSE

(REPEALED)

SECTION HISTORY
1979, c. 478, §1 (RP).

§260. AUCTIONS BY CHARITABLE AND NONPROFIT ORGANIZATIONS EXEMPT

(REPEALED)

SECTION HISTORY
1979, c. 478, §1 (RP).

§261. PENALTY

(REPEALED)

SECTION HISTORY
1979, c. 478, §1 (RP).

Chapter 5-A: AUCTIONEERS

§270. DEFINITIONS

(REPEALED)

SECTION HISTORY
1995, c. 402, §A10 (NEW). 1997, c. 183, §1 (AMD). 1999, c. 146, §4 (RP).

§271. BOARD OF LICENSING OF AUCTIONEERS

(REPEALED)

SECTION HISTORY
1979, c. 478, §2 (NEW). 1983, c. 413, §13 (RPR). 1983, c. 553, §46 (AMD). 1983, c. 812, §§194,195 (AMD). 1985, c. 389, §9 (AMD). 1985, c. 748, §30 (RPR). 1989, c. 503, §B122 (AMD). 1991, c. 203, §1 (AMD). 1993, c. 600, §A38 (AMD). 1999, c. 146, §4 (RP).

§271-A. DISPOSITION OF FEES

(REPEALED)

SECTION HISTORY
1983, c. 824, §S (NEW). 1985, c. 748, §31 (AMD). 1995, c. 397, §25 (RP). 1995, c. 402, §A11 (AMD). 1995, c. 625, §A36 (RP).

§271-B. POWERS AND DUTIES

(REPEALED)

SECTION HISTORY
1995, c. 402, §A12 (NEW). 1999, c. 146, §4 (RP).

§272. PROHIBITION

(REPEALED)

SECTION HISTORY
1979, c. 478, §2 (NEW). 1983, c. 413, §14 (AMD). 1991, c. 203, §2 (RPR). 1999, c. 146, §4 (RP).

§272-A. INITIAL AND RENEWAL LICENSE FEE WAIVED FOR SMALL AUCTIONEER

(REPEALED)

SECTION HISTORY
1995, c. 402, §A13 (NEW). 1997, c. 183, §2 (RP).

§273. RESIDENT APPLICATION; FEE

(REPEALED)

SECTION HISTORY

1979, c. 478, §2 (NEW). 1979, c. 705, §1 (AMD). 1983, c. 413, §15 (AMD). 1985, c. 748, §32 (AMD). 1991, c. 203, §3 (AMD). 1995, c. 402, §A14 (AMD). 1997, c. 183, §3 (AMD). 1999, c. 146, §4 (RP).

§274. RENEWAL

(REPEALED)

SECTION HISTORY
1979, c. 478, §2 (NEW). 1983, c. 413, §16 (AMD). 1991, c. 203, §4 (AMD). 1995, c. 402, §A15 (AMD). 1999, c. 146, §4 (RP).

§275. LICENSE LIMITATIONS

(REPEALED)

SECTION HISTORY
1979, c. 478, §2 (NEW). 1995, c. 402, §A16 (AMD). 1997, c. 183, §4 (AMD). 1999, c. 146, §4 (RP).

§276. NONRESIDENT CERTIFICATION

(REPEALED)

SECTION HISTORY
1979, c. 478, §2 (NEW). 1983, c. 413, §17 (AMD). 1985, c. 276, §33 (AMD). 1985, c. 748, §33 (AMD). 1995, c. 402, §A17 (AMD). 1997, c. 183, §5 (AMD). 1999, c. 146, §4 (RP).

§277. NONRESIDENT FEE; RENEWAL

(REPEALED)

SECTION HISTORY
1979, c. 478, §2 (NEW). 1991, c. 203, §5 (AMD). 1995, c. 402, §A18 (AMD). 1999, c. 146, §4 (RP).

§278. REVOCATION, SUSPENSION OR REFUSAL TO ISSUE OR RENEW

(REPEALED)

SECTION HISTORY
1979, c. 478, §2 (NEW). 1979, c. 705, §§2-6 (AMD). 1983, c. 413, §18 (RP).

§278-A. INVESTIGATIONS; HEARINGS; LICENSE SUSPENSION OR REVOCATION

(REPEALED)

SECTION HISTORY
1983, c. 413, §19 (NEW). 1985, c. 748, §34 (AMD). 1991, c. 203, §§6,7 (AMD). 1995, c. 402, §A19 (AMD). 1999, c. 146, §4 (RP).

§279. INSPECTION OF LICENSE

(REPEALED)

SECTION HISTORY
1979, c. 478, §2 (NEW). 1995, c. 402, §A20 (AMD). 1997, c. 183, §6 (AMD). 1999, c. 146, §4 (RP).

§280. LIMITATION ON SALE OF PROPERTY

(REPEALED)

SECTION HISTORY
1979, c. 478, §2 (NEW). 1981, c. 501, §52 (AMD). 1989, c. 450, §7 (AMD). 1991, c. 203, §8 (AMD). 1995, c. 402, §§A21-23 (AMD). 1997, c. 183, §§7,8 (AMD). 1999, c. 146, §4 (RP).

§281. EXEMPTIONS

(REPEALED)

SECTION HISTORY
1979, c. 478, §2 (NEW). 1979, c. 705, §7 (AMD). 1995, c. 57, §2 (AMD). 1995, c. 402, §A24 (AMD). 1999, c. 146, §4 (RP).

§282. PENALTIES; INJUNCTION

(REPEALED)

SECTION HISTORY
1979, c. 478, §2 (NEW). 1983, c. 413, §20 (RPR). 1991, c. 203, §9 (AMD). 1995, c. 402, §A25 (AMD). 1997, c. 183, §9 (AMD). 1999, c. 146, §4 (RP).

§283. CONDITIONS OF AUCTION SALES

(REPEALED)

SECTION HISTORY
1979, c. 478, §2 (NEW). 1979, c. 705, §8 (AMD). 1991, c. 203, §§10,11 (AMD). 1995, c. 402, §A26 (AMD). 1997, c. 183, §§10,11 (AMD). 1999, c. 146, §4 (RP).

Chapter 5-B: AUCTIONEERS

Subchapter 1: GENERAL PROVISIONS HEADING: PL 1999, C. 146, §5 (NEW)

§284. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1999, c. 146, §5 (NEW).]

1. **Auction.** "Auction" means the offering of goods or real estate for sale by means of exchanges between an auctioneer and bidders.

[1999, c. 146, §5 (NEW) .]

2. **Auctioneer.** "Auctioneer" means any person who conducts, advertises or offers that person's service to conduct auctions; contracts or offers to contract with consignors of real or personal property, with or without receiving or collecting a fee, commission or other valuable consideration; or sells or offers to sell property at auction.

[1999, c. 146, §5 (NEW) .]

3. **Bid.** "Bid" means an offer to buy.

[1999, c. 146, §5 (NEW) .]

4. **Board.** "Board" means the Board of Licensing of Auctioneers, as established by Title 5, section 12004-A, subsection 5.

[1999, c. 146, §5 (NEW) .]

5. **Buyer's premium.** "Buyer's premium" means a premium usually described as a percentage of the final bid to be paid by the buyer as part of the purchase price.

[1999, c. 146, §5 (NEW) .]

6. **Consignor.** "Consignor" means the bona fide owner, agent or party in interest of the personal property or real estate being offered for sale.

[1999, c. 146, §5 (NEW) .]

7. **Completion of sale.** "Completion of the sale" means the acceptance of the final bid by the auctioneer as indicated by the fall of the hammer or in another customary manner.

[1999, c. 146, §5 (NEW) .]

8. **Person.** "Person" means an individual.

[1999, c. 146, §5 (NEW) .]

9. **Reasonable period of time.** "Reasonable period of time" means not more than 30 days from the date of the auction or such other time as is stated in a contract.

[1999, c. 146, §5 (NEW) .]

10. **With reserve.** "With reserve" means that the consignor reserves the right to establish a minimum bid, to accept or reject any bid and to withdraw the property at any time prior to the announcement of the completion of the sale by the auctioneer.

[1999, c. 146, §5 (NEW) .]

11. **Without reserve.** "Without reserve" means that no minimum opening bid or other condition that limits the sale other than to the highest bidder is required and that the consignor may not modify or nullify the sale by bidding either personally or through a representative. An auction without reserve is the same as an absolute auction.

[1999, c. 146, §5 (NEW) .]

SECTION HISTORY
1999, c. 146, §5 (NEW).

§285. LICENSE REQUIRED

A person in this State who engages in the business of auctioneering, professes or advertises to be an auctioneer or advertises the sale of real, personal or mixed property by auction shall hold a valid auctioneer's license. [1999, c. 146, §5 (NEW).]

SECTION HISTORY
1999, c. 146, §5 (NEW).

§286. EXEMPTIONS TO LICENSING

1. **Personal use.** A person does not require a license in order to auction personal or real property that the person has maintained for that person's use or personal property that the person's parents, spouse or children have maintained for their own use.

[1999, c. 146, §5 (NEW) .]

2. **Charitable, educational, religious or nonprofit organizations.** This chapter does not apply to individuals who conduct a sale or auction for a charitable, educational, religious or other nonprofit organization as long as the nonprofit organization retains the total amount of the proceeds, with the exception of advertising fees, and the person conducting the sale or auction receives no fee for services.

[1999, c. 146, §5 (NEW) .]

3. **Sheriffs, tax collectors, executors and administrators.** This chapter does not apply to sheriffs or their deputies, constables, tax collectors, executors, administrators or any other officers authorized to sell property by order of any court.

[1999, c. 146, §5 (NEW) .]

4. **Pedigreed animals.** This chapter does not prohibit any person employed by the owner of pedigreed animals from selling those animals at public auction.

[1999, c. 146, §5 (NEW) .]

5. **Foreclosure sales.** This chapter does not apply to any individual conducting a foreclosure sale pursuant to a court order.

[1999, c. 146, §5 (NEW) .]

6. **Tax-acquired property.** This chapter does not apply to the sale by or on behalf of a municipality of any real or personal property acquired by that municipality for nonpayment of taxes.

[1999, c. 146, §5 (NEW) .]

7. **Assistants.** This chapter does not apply to a person assisting the auctioneer in conducting the auction sale if the auctioneer is physically present and assumes full responsibility for the auction sale. The assistant may not be a person who has had an auctioneer license denied, suspended or revoked in this State or in any other state.

[2011, c. 286, Pt. C, §1 (AMD) .]

8. **Contracted Internet services.** This chapter does not apply to an individual who takes possession of goods pursuant to a contract for the exclusive purpose of selling those goods over the Internet, unless otherwise licensed under this chapter.

[2007, c. 61, §1 (AMD) .]

SECTION HISTORY
1999, c. 146, §5 (NEW). 2005, c. 349, §1 (AMD). 2007, c. 61, §1 (AMD). 2011, c. 286, Pt. C, §1 (AMD).

§287. PENALTIES

Any person who violates section 285 is subject to the provisions of Title 10, section 8003-C. [2007, c. 402, Pt. G, §1 (AMD).]

SECTION HISTORY
1999, c. 146, §5 (NEW). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 402, Pt. G, §1 (AMD).

§287-A. FEES

The Director of the Office of Professional and Occupational Regulation within the Department of Professional and Financial Regulation may establish by rule fees for purposes authorized under this chapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for any one purpose may not exceed $200 annually. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A. [2001, c. 323, §15 (NEW); 2011, c. 286, Pt. B, §5 (REV).]

SECTION HISTORY
2001, c. 323, §15 (NEW). 2011, c. 286, Pt. B, §5 (REV).

Subchapter 2: BOARD HEADING: PL 1999, C. 146, §5 (NEW)

§288. BOARD OF LICENSING OF AUCTIONEERS; ORGANIZATION

1. **Board composition.** The Board of Licensing of Auctioneers, as established by Title 5, section 12004-A, subsection 5, is composed of 5 members, 3 of whom must be auctioneers and 2 of whom must be public members as defined in Title 5, section 12004-A.

[2007, c. 402, Pt. G, §2 (AMD) .]

2. **Terms; removal.** The terms of the members of the board are for 3 years. Members may be removed by the Governor for cause.

[1999, c. 146, §5 (NEW) .]

3. **Appointments.** The members of the board are appointed by the Governor. Appointments of members must comply with Title 10, section 8009.

[2007, c. 402, Pt. G, §2 (AMD) .]

4. **Meetings.** The board shall meet at least once a year and at such other times as the board determines necessary.

[2013, c. 246, Pt. B, §4 (AMD) .]

SECTION HISTORY
1999, c. 146, §5 (NEW). 2007, c. 402, Pt. G, §2 (AMD). 2013, c. 246, Pt. B, §4 (AMD).

§289. RULES

The board may establish guidelines and rules by which this chapter is administered. Rules adopted pursuant to this chapter are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A. Rules adopted by the board must be consistent with Title 5, chapter 375, subchapter II. [1999, c. 146, §5 (NEW).]

1. **Adjudicatory hearings.**

[2007, c. 402, Pt. G, §3 (RP) .]

2. **Investigations.**

[2007, c. 402, Pt. G, §4 (RP) .]

3. **Standards of practice.** The board may adopt rules governing the practice of auctioneering that establish standards of practice that serve to protect the public interest.

[1999, c. 146, §5 (NEW) .]

4. **License qualifications.** The board may adopt rules relating to the qualifications of an applicant for any license authorized under this chapter that ensure that an applicant is sufficiently trustworthy and competent to practice auctioneering.

[1999, c. 146, §5 (NEW) .]

5. **Fees.**

[2001, c. 323, §16 (RP) .]

6. **Other.** The board may adopt any other rules that are necessary for the performance of its duties under this chapter.

[1999, c. 146, §5 (NEW) .]

SECTION HISTORY

1999, c. 146, §5 (NEW). 1999, c. 687, §F3 (AMD). 2001, c. 323, §16 (AMD). 2007, c. 402, Pt. G, §§3, 4 (AMD).

§290. POWERS

The board shall administer and enforce this chapter and evaluate the qualifications of applicants for licensure. [2007, c. 402, Pt. G, §5 (RPR).]

SECTION HISTORY
1999, c. 146, §5 (NEW). 1999, c. 687, §F4 (AMD). 2007, c. 402, Pt. G, §5 (RPR).

§291. GROUNDS FOR DISCIPLINARY ACTION

(REPEALED)

SECTION HISTORY
1999, c. 146, §5 (NEW). 2003, c. 582, §3 (AMD). 2007, c. 402, Pt. G, §6 (RP).

§291-A. DENIAL OR REFUSAL TO RENEW LICENSE; DISCIPLINARY ACTION

In addition to the grounds enumerated in Title 10, section 8003, subsection 5-A, paragraph A, the board may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A for any of the following reasons: [2007, c. 402, Pt. G, §7 (NEW).]

1. **Failure to account or remit.** Failure, within a reasonable time, to account for or remit any money or property coming into the licensee's possession that belongs to others;

[2007, c. 402, Pt. G, §7 (NEW) .]

2. **Record-keeping violations.** Failure to comply with or properly maintain records required by Title 30-A, section 3971;

[2011, c. 286, Pt. C, §2 (AMD) .]

3. **Improper advertising.** Advertising an auction without including the name and license number of the auctioneer; or

[2011, c. 286, Pt. C, §3 (AMD) .]

4. **Unqualified assistants.** Allowing a person to act as an assistant who has had an auctioneer license denied, suspended or revoked in this State or in any other state.

[2011, c. 286, Pt. C, §4 (NEW) .]

SECTION HISTORY
2007, c. 402, Pt. G, §7 (NEW). 2011, c. 286, Pt. C, §§2-4 (AMD).

Subchapter 3: LICENSING QUALIFICATIONS
HEADING: PL 1999, C. 146, §5 (NEW)

§292. LICENSE QUALIFICATIONS

1. **Application.** An applicant shall submit an application together with the fee as set under section 287-A.

[2007, c. 402, Pt. G, §8 (AMD) .]

2. **Residence.** The applicant shall provide evidence of the applicant's legal residence.

[1999, c. 146, §5 (NEW) .]

3. **Reputation.** The applicant must have a good reputation for honesty, fair dealing and competency.

[2013, c. 217, Pt. J, §1 (AMD) .]

4. **Examination.** Each applicant shall satisfactorily pass the examination, the content of which is determined by the board. Examination results remain valid for issuance of a license for 90 days after the exam is passed.

[2007, c. 402, Pt. G, §8 (AMD) .]

5. **Surety bond.** Each applicant for licensure shall file a surety bond in an amount set by the board by rule.

[1999, c. 146, §5 (NEW) .]

6. **Criminal history information.**

[2007, c. 402, Pt. G, §8 (RP) .]

SECTION HISTORY
1999, c. 146, §5 (NEW). 2007, c. 402, Pt. G, §8 (AMD). 2013, c. 217, Pt. J, §1 (AMD).

§293. LICENSE LIMITED TO INDIVIDUALS

Licensure is determined based on individual and personal qualifications. A firm, company, partnership or corporation may not be licensed under this chapter. [1999, c. 146, §5 (NEW).]

SECTION HISTORY
1999, c. 146, §5 (NEW).

§294. NONRESIDENT LICENSURE

1. **Nonresident license.** Every nonresident person desiring to do business as an auctioneer in this State shall obtain a license. The board may issue a license to any nonresident upon fulfillment of the same application requirements as those set forth for resident auctioneers. In addition, a nonresident applicant shall furnish the following:

A. A certificate of good standing from each jurisdiction where the applicant is licensed; and [1999, c. 146, §5 (NEW).]

B. [2013, c. 217, Pt. K, §1 (RP).]

[2013, c. 217, Pt. K, §1 (AMD) .]

SECTION HISTORY
1999, c. 146, §5 (NEW). 2011, c. 286, Pt. B, §5 (REV). 2013, c. 217, Pt. K, §1 (AMD).

§295. RENEWAL

Licenses expire annually on March 31st or at a time the Commissioner of Professional and Financial Regulation designates. The board may issue a renewal license in the absence of any reason or condition that might warrant the refusal of granting a license upon receipt of the written request of the applicant and the renewal fee as set under section 287-A and upon the applicant presenting evidence of compliance with the requirements of section 292, subsection 5. A license may be renewed up to 90 calendar days after the date of its expiration upon payment of a late fee in addition to the renewal fee. Any applicant who submits an application for renewal more than 90 calendar days after the expiration date is subject to all requirements governing new applicants under this chapter. [2007, c. 402, Pt. G, §9 (AMD).]

SECTION HISTORY
1999, c. 146, §5 (NEW). 2007, c. 402, Pt. G, §9 (AMD).

§296. INSPECTION OF LICENSE; OWNERSHIP

Every auctioneer shall show that auctioneer's license at any time upon the request of a municipal law enforcement agency or officer or a municipal clerk or official in whose municipality the auctioneer is conducting an auction. The provisions for obtaining a state auctioneer's license do not prohibit any municipality from establishing its own permit requirements for an auction sale, provided no municipal permit is required for an auction that lasts less than 2 full consecutive days. [1999, c. 146, §5 (NEW).]

A municipal law enforcement agency or officer or a municipal clerk or official may require the auctioneer to state whether the merchandise is owned by another party and the name and address of that party. [1999, c. 146, §5 (NEW).]

SECTION HISTORY
1999, c. 146, §5 (NEW).

§297. REAL ESTATE BROKERAGE

If an auctioneer engages in real estate brokerage, the auctioneer must be licensed under chapter 114, except that a real estate license is not required if the auctioneer is hired to call bids on real estate being sold at an auction and the auctioneer does not prepare contracts or otherwise control the actual sale or take custody of any part of the purchase price. [1999, c. 146, §5 (NEW).]

SECTION HISTORY
1999, c. 146, §5 (NEW).

§298. CONTRACT REQUIRED

1. **Contract required.** An auctioneer may not conduct an auction in this State without first having a written contract with the consignor of any property to be sold. The contract must contain the date of the contract and the name and license number of the auctioneer. The contract must contain the terms and conditions of the auction, including but not limited to:

A. The description of all items to be sold; [1999, c. 146, §5 (NEW).]

B. Whether the auction is with reserve or without reserve; [1999, c. 146, §5 (NEW).]

C. The payment schedule; [1999, c. 146, §5 (NEW).]

D. The commission rate; and [1999, c. 146, §5 (NEW).]

E. The statement of other charges, including a buyer's premium. [1999, c. 146, §5 (NEW).]

[1999, c. 146, §5 (NEW) .]

SECTION HISTORY
1999, c. 146, §5 (NEW).

§299. CONDITIONS OF AUCTION SALES

Each auctioneer shall post for display and describe at the beginning of each auction the conditions of the auction sale. The conditions must indicate: [1999, c. 146, §5 (NEW).]

1. **Sold "as is."** Whether the property is sold "as is";

[1999, c. 146, §5 (NEW) .]

2. **Highest bidder acknowledged.** Whether the highest bidder at the completion of the sale will be acknowledged by the auctioneer;

[1999, c. 146, §5 (NEW) .]

3. **Reserve.** Whether the auction is with reserve or without reserve and the acceptable manner of bids;

[1999, c. 146, §5 (NEW) .]

4. **Absentee bids.** Whether absentee bids are allowed;

[1999, c. 146, §5 (NEW) .]

5. **Sales tax.** Sales tax requirements;

[1999, c. 146, §5 (NEW) .]

6. **Auctioneer or consignor bidding.** Whether or not the auctioneer or consignor reserves the right to bid;

[1999, c. 146, §5 (NEW) .]

7. **Uniform Commercial Code.** A statement that Title 11, section 2-328 applies to this auction sale;

[1999, c. 146, §5 (NEW) .]

8. **Statement of buyer's premium.** A statement of the buyer's premium and any other charges to the bidders or any other persons in attendance; and

[1999, c. 146, §5 (NEW) .]

9. **Title and address.** The title and address of the board.

[1999, c. 146, §5 (NEW) .]

SECTION HISTORY
1999, c. 146, §5 (NEW).

Chapter 7: BARBERS AND BARBERSHOPS

Subchapter 1: GENERAL PROVISIONS HEADING: PL 1991, C. 397, §5 (RP)

§301. DEFINITIONS

(REPEALED)

SECTION HISTORY
1967, c. 137, (AMD). 1973, c. 373, §§1,2 (AMD). 1977, c. 398, §§1,2 (AMD). 1983, c. 841, §§7,8 (AMD). 1987, c. 395, §A122 (AMD). 1989, c. 700, §A133 (AMD). 1991, c. 397, §5 (RP).

§302. EXEMPTIONS; EXCEPTIONS

(REPEALED)

SECTION HISTORY
1977, c. 398, §3 (RPR). 1981, c. 493, §2 (AMD). 1983, c. 339, §§1,2 (AMD). 1987, c. 395, §A123 (AMD). 1989, c. 162, §1 (AMD). 1991, c. 397, §5 (RP).

§303. SCHOOLS

(REPEALED)

SECTION HISTORY
1965, c. 38, §1 (AMD). 1969, c. 151, §§1,2 (AMD). 1971, c. 314, §1 (AMD). 1973, c. 303, §3 (AMD). 1975, c. 144, §1 (AMD). 1977, c. 398, §4 (RPR). 1977, c. 694, §549 (AMD). 1983, c. 413, §21 (RP).

§303-A. INSTRUCTORS OF BARBERING

(REPEALED)

SECTION HISTORY
1985, c. 389, §10 (NEW). 1985, c. 797, §67 (AMD). 1987, c. 395, §A124 (AMD). 1989, c. 700, §A134 (AMD). 1991, c. 397, §5 (RP).

§304. PENALTIES

(REPEALED)

SECTION HISTORY
1973, c. 373, §3 (AMD). 1977, c. 398, §5 (RPR). 1983, c. 413, §22 (AMD). 1987, c. 395, §A125 (AMD). 1991, c. 397, §5 (RP).

§305. PRACTICING IN SAME SHOPS

(REPEALED)

SECTION HISTORY
1977, c. 398, §6 (NEW). 1987, c. 395, §A126 (RPR). 1991, c. 397, §5 (RP).

Subchapter 2: STATE BOARD OF BARBERS
HEADING: PL 1991, C. 397, §5 (RP)

§351. BOARD

(REPEALED)

SECTION HISTORY
1969, c. 151, §3 (AMD). 1971, c. 277, §1 (AMD). 1971, c. 614, §1 (AMD). 1973, c. 303, §3 (AMD). 1975, c. 575, §8 (AMD). 1975, c. 771, §§334,335 (AMD). 1977, c. 398, §7 (RPR). 1977, c. 604, §9 (AMD). 1983, c. 413, §23 (AMD). 1983, c. 553, §46 (AMD). 1983, c. 812, §§196,197 (AMD). 1985, c. 785, §B130 (AMD). 1987, c. 395, §A127 (AMD). 1989, c. 503, §B123 (AMD). 1991, c. 397, §5 (RP).

§352. POWERS AND DUTIES

(REPEALED)

SECTION HISTORY
1969, c. 151, §4 (AMD). 1973, c. 303, §3 (AMD). 1973, c. 373, §4 (AMD). 1975, c. 293, §4 (AMD). 1977, c. 398, §8 (RPR). 1977, c. 604, §10 (AMD). 1977, c. 694, §§550-552 (AMD). 1981, c. 698, §154 (AMD). 1983, c. 339, §3 (AMD). 1983, c. 413, §§24-27 (AMD). 1983, c. 553, §46 (AMD). 1983, c. 758, §4 (AMD). 1983, c. 841, §§9,10 (AMD). 1985, c. 748, §§35,36 (AMD). 1987, c. 395, §§A128-A130 (AMD). 1989, c. 162, §2 (AMD). 1991, c. 397, §5 (RP).

§353. REGISTER

(REPEALED)

SECTION HISTORY
1983, c. 841, §11 (AMD). 1991, c. 397, §5 (RP).

§354. DISPOSITION OF FEES

(REPEALED)

SECTION HISTORY
1969, c. 151, §5 (RPR). 1991, c. 397, §5 (RP).

Subchapter 3: LICENSURE HEADING: PL 1991, C. 397, §5 (RP)

§401. REGISTRATION AND LICENSES

(REPEALED)

SECTION HISTORY
1965, c. 38, §2 (AMD). 1969, c. 151, §6 (AMD). 1969, c. 272, §1 (AMD). 1973, c. 373, §§5,6 (AMD). 1975, c. 116, §2 (AMD). 1977, c. 398, §9 (RPR). 1977, c. 564, §118K (AMD). 1979, c. 286, (AMD). 1979, c. 694, §§1,2 (AMD). 1983, c. 841, §§12,13 (AMD). 1985, c. 748, §37 (AMD). 1987, c. 395, §A132 (AMD). 1989, c. 700, §A135 (AMD). 1991, c. 397, §5 (RP).

§401-A. MOBILE BARBER SHOPS

(REPEALED)

SECTION HISTORY
1979, c. 630, (NEW). 1991, c. 397, §5 (RP).

§402. QUALIFICATIONS; EXAMINATION

(REPEALED)

SECTION HISTORY
1965, c. 287, (AMD). 1969, c. 272, §1A (AMD). 1971, c. 314, §2 (AMD). 1973, c. 373, §§7,8 (AMD). 1975, c. 144, §§2,3 (AMD). 1977, c. 398, §9 (RPR). 1979, c. 694, §3 (AMD). 1983, c. 841, §§14,15 (AMD). 1987, c. 395, §§A133-A135 (AMD). 1989, c. 700, §§A136,137 (AMD). 1991, c. 397, §5 (RP).

§403. TEMPORARY PERMIT

(REPEALED)

SECTION HISTORY
1977, c. 398, §9 (RPR). 1987, c. 395, §A136 (AMD). 1991, c. 397, §5 (RP).

§404. RECIPROCITY WITH OTHER STATES

(REPEALED)

SECTION HISTORY
1969, c. 151, §7 (AMD). 1977, c. 398, §9 (RPR). 1983, c. 413, §28 (AMD). 1987, c. 395, §A137 (AMD). 1991, c. 397, §5 (RP).

§404-A. TECHNICIANS

(REPEALED)

SECTION HISTORY
1969, c. 272, §2 (NEW). 1977, c. 398, §9 (RP).

§405. APPRENTICES

(REPEALED)

SECTION HISTORY
1969, c. 151, §8 (AMD). 1977, c. 398, §9 (RPR). 1987, c. 395, §A138 (AMD). 1991, c. 397, §5 (RP).

§406. TECHNICIANS

(REPEALED)

SECTION HISTORY
1967, c. 139, (AMD). 1969, c. 151, §9 (AMD). 1969, c. 231, §1 (AMD). 1973, c. 373, §9 (AMD). 1977, c. 398, §9 (RPR). 1987, c. 395, §A139 (AMD). 1991, c. 397, §5 (RP).

§407. LICENSES; RENEWAL

(REPEALED)

SECTION HISTORY
1973, c. 303, §3 (AMD). 1977, c. 398, §9 (RPR). 1979, c. 694, §4 (AMD). 1983, c. 413, §29 (AMD). 1985, c. 748, §§38,39 (AMD). 1987, c. 395, §A140 (AMD). 1991, c. 397, §5 (RP).

§407-A. FEES

(REPEALED)

SECTION HISTORY
1987, c. 395, §A141 (NEW). 1987, c. 769, §A119 (RPR). 1991, c. 397, §5 (RP).

§408. SUSPENSION, REVOCATION AND REFUSAL TO ISSUE OR TO RENEW REGISTRATION OR LICENSE

(REPEALED)

SECTION HISTORY
1977, c. 398, §9 (NEW). 1977, c. 694, §553 (AMD). 1983, c. 413, §30 (AMD). 1987, c. 395, §A142 (AMD). 1991, c. 397, §5 (RP).

Chapter 9: CHIROPRACTORS

Subchapter 1: GENERAL PROVISIONS

§451. DEFINITIONS

1. **Chiropractic.** "Chiropractic" means the art and science of identification and correction of subluxation and the accompanying physiological or mechanical abnormalities. The term subluxation, as utilized within the chiropractic health care system, means a structural or functional impairment of an intact articular unit. "Chiropractic" includes chiropractic acupuncture. Chiropractic recognizes the inherent recuperative capability of the human body as it relates to the spinal column, musculo-skeletal and nervous system.

[1999, c. 214, §1 (AMD) .]

1-A. **Chiropractic acupuncture.** "Chiropractic acupuncture" means the insertion of acupuncture needles through the skin at specific points. It is a chiropractic methodology used for the correction of the soft tissue components contributing to subluxation and the accompanying physiological or mechanical abnormalities. Except as provided in section 502, chiropractic acupuncture may only be practiced by a licensee who has received a chiropractic acupuncture certification from the board.

[1999, c. 214, §2 (NEW) .]

2. **Chiropractic doctors.** "Chiropractic doctors" are health care providers functioning within their scope of practice as provided by this chapter.

[1983, c. 113, §1 (NEW) .]

3. **Chiropractic methodologies.** "Chiropractic methodologies" utilized for the identification or correction of subluxation and the accompanying physiological or mechanical abnormalities include diagnostic, therapeutic, adjustive or manipulative techniques utilized within the chiropractic profession, excluding prescriptive medication or surgery.

[1983, c. 113, §1 (NEW) .]

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

[1989, c. 450, §8 (NEW) .]

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

[1989, c. 450, §8 (NEW) .]

6. **Board.** "Board" means the Board of Chiropractic Licensure.

[2007, c. 402, Pt. H, §1 (NEW) .]

SECTION HISTORY
1983, c. 113, §1 (RPR). 1989, c. 450, §8 (AMD). 1999, c. 214, §§1,2 (AMD). 2007, c. 402, Pt. H, §1 (AMD).

§452. APPLICATION OF LAWS REGARDING REPORTING CONTAGIOUS DISEASES AND DEATHS

All laws and rules regulating the reporting of contagious diseases and deaths to the proper authorities and to which the licensed practitioner of medicine is subject apply equally to the practitioner of chiropractic. [1993, c. 600, Pt. A, §39 (AMD).]

SECTION HISTORY
1993, c. 600, §A39 (AMD).

§453. LEGALLY LICENSED PRACTITIONERS OF OTHER SCHOOLS OR PROFESSIONS NOT AFFECTED

This chapter may not be construed to: restrain or restrict legally licensed physicians, surgeons, dentists, osteopaths, physical therapists or nurses in the practice of their professions; apply to masseurs in their particular sphere of labor who publicly represent themselves as masseurs; apply to a commissioned medical officer in the United States Army or Public Health Service in the performance of duties; or prohibit gratuitous service or the rendering of assistance to emergency cases. [1993, c. 600, Pt. A, §40 (AMD).]

SECTION HISTORY
1991, c. 178, §1 (AMD). 1993, c. 600, §A40 (AMD).

§454. PRACTICING WITHOUT LICENSE; FRAUDULENT LICENSES

An individual who practices or attempts to practice or use the science or system of chiropractic in treating diseases of the human body; an individual who buys, sells or fraudulently obtains a diploma, license or record to practice chiropractic, or who aids or abets in that selling or fraudulent obtaining; an individual who practices chiropractic, under cover of a diploma, license or record to practice chiropractic, illegally obtained, or signed or issued unlawfully or under fraudulent representations; or an individual who, after conviction of felony, practices chiropractic, or who uses any of the forms of letters, "Chiropractic," "Chiropractor," "Chiropractic Practitioner," "Doctor of Chiropractic," "D.C." or any other titles or letters, either alone or with qualifying words or phrases, under circumstances that induce the belief that the individual who uses those terms is engaged in the practice of chiropractic, without having complied with this chapter, is subject to the provisions of Title 10, section 8003-C. This section may not be construed to prohibit a lawfully qualified chiropractor in any other state meeting with a licensed chiropractic practitioner in this State for consultation. [2007, c. 402, Pt. H, §2 (AMD).]

SECTION HISTORY
1991, c. 392, §1 (AMD). 1993, c. 600, §A41 (AMD). 2007, c. 402, Pt. H, §2 (AMD).

§455. REVIEW COMMITTEE IMMUNITY

Any member of a peer review committee of a state association composed of chiropractors licensed under this chapter, any staff member of such an association assisting a peer review committee and any witness or consultant appearing before or presenting information to the peer review committee is immune from civil liability for, without malice, undertaking or failing to undertake any act within the scope of the function of the committee. [1987, c. 646, §7 (NEW).]

SECTION HISTORY
1987, c. 646, §7 (NEW).

Subchapter 2: BOARD OF CHIROPRACTIC LICENSURE
HEADING: PL 1993, C. 600, PT. A, §42 (RPR)

§501. MEMBERSHIP; QUALIFICATIONS; TERM; REMOVAL

The Board of Chiropractic Licensure, as established by Title 5, section 12004-A, subsection 8, consists of 7 individuals appointed by the Governor. These individuals must be residents of this State, 5 of whom must be licensed chiropractors and must be, at the time of their appointment, actively engaged in the practice of their profession for a period of at least 3 years in this State. Two members must be public members as defined in Title 5, section 12004-A. Each appointment is for a period of 3 years. Appointments of members must comply with Title 10, section 8009. A member of the board may be removed from office for cause by the Governor. [2007, c. 402, Pt. H, §3 (AMD).]

SECTION HISTORY
1975, c. 575, §9 (AMD). 1975, c. 771, §336 (AMD). 1983, c. 812, §198 (AMD). 1989, c. 503, §B124 (AMD). 1991, c. 392, §2 (AMD). 1993, c. 600, §A43 (AMD). 1995, c. 397, §26 (AMD). 2007, c. 402, Pt. H, §3 (AMD).

§502. MEETINGS; CHAIR; POWERS AND DUTIES

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. The board may make and adopt rules and a code of ethics consistent with law necessary for the enforcement of its authority, the performance of its duties and the governing of the practice of chiropractic, but a rule or code of ethics may not be made that is unreasonable or contravenes this chapter. [2013, c. 246, Pt. B, §5 (AMD).]

1. Fraud.

[2007, c. 402, Pt. H, §4 (RP) .]

2. Practice outside chiropractic.

[2007, c. 402, Pt. H, §4 (RP) .]

3. Solicitation.

[1977, c. 458, §1 (RP) .]

4. Advertising.

[2007, c. 402, Pt. H, §4 (RP) .]

5. Fee splitting.

[2007, c. 402, Pt. H, §4 (RP) .]

SECTION HISTORY
1973, c. 405, §§2,3 (AMD). 1975, c. 575, §10 (AMD). 1977, c. 458, §§1,2 (AMD). 1981, c. 456, §A105 (AMD). 1991, c. 392, §3 (AMD). 1993, c. 600, §§A44,45 (AMD). 1999, c. 214, §3 (AMD). 2005, c. 262, §A1 (AMD). 2007, c. 402, Pt. H, §4 (RPR). 2013, c. 246, Pt. B, §5 (AMD).

§502-A. CHIROPRACTIC ACUPUNCTURE CERTIFICATION

The board shall adopt rules, which are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A, authorizing and governing the use of chiropractic acupuncture by certified licensees. The rules must set forth the requirements for chiropractic acupuncture certification, which must include, but are not limited

to, a minimum number of classroom hours of education in acupuncture theory and techniques; a component of supervised clinical acupuncture training or documented clinical acupuncture experience for licensees practicing chiropractic acupuncture prior to April 30, 1999; and instruction in exposure control for blood-borne pathogens and registration as a biomedical waste generator pursuant to Title 38, section 1319-O, subsection 3. A person applying for a chiropractic acupuncture certificate shall file an application together with the fee as set under section 558. [2007, c. 402, Pt. H, §5 (NEW).]

SECTION HISTORY
2007, c. 402, Pt. H, §5 (NEW).

§503. COMPLAINTS; SUSPENSION OR REVOCATION OF CERTIFICATES

(REPEALED)

SECTION HISTORY
1973, c. 303, §3 (AMD). 1973, c. 405, §4 (AMD). 1979, c. 663, §209 (AMD). 1981, c. 594, §1 (AMD). 1983, c. 378, §3 (RP).

§503-A. DISCIPLINARY ACTIONS

(REPEALED)

SECTION HISTORY
1983, c. 378, §4 (NEW). 1991, c. 392, §4 (AMD). 1993, c. 600, §A46 (AMD). 1999, c. 547, §B59 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 402, Pt. H, §6 (RP).

§503-B. DENIAL OR REFUSAL TO RENEW LICENSE; DISCIPLINARY ACTION

In addition to the grounds enumerated in Title 10, section 8003, subsection 5-A, paragraph A, the board may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A for: [2007, c. 402, Pt. H, §7 (NEW).]

1. **Habitual substance abuse.** Habitual substance abuse that has resulted or is foreseeably likely to result in the applicant or licensee performing services in a manner that endangers the health or safety of patients;

[2007, c. 402, Pt. H, §7 (NEW) .]

2. **Mental or physical condition.** A professional diagnosis of a mental or physical condition that has resulted or may result in the applicant or licensee performing services in a manner that endangers the health or safety of patients;

[2007, c. 402, Pt. H, §7 (NEW) .]

3. **False advertising.** Engaging in false, misleading or deceptive advertising;

[2007, c. 402, Pt. H, §7 (NEW) .]

4. **Nonchiropractic practice.** Offering health services outside the field of chiropractic; or

[2007, c. 402, Pt. H, §7 (NEW) .]

5. **Fee-splitting.** Splitting or dividing a fee with an individual who is not an associate licensed as a chiropractor.

[2007, c. 402, Pt. H, §7 (NEW) .]

SECTION HISTORY
2007, c. 402, Pt. H, §7 (NEW). 2011, c. 286, Pt. E, §1 (AMD).

§504. ANNUAL REPORTS

(REPEALED)

SECTION HISTORY
1977, c. 604, §11 (AMD). 1985, c. 748, §42 (AMD). 2007, c. 402, Pt. H, §8 (RP).

§505. LIAISON; LIMITATIONS

(REPEALED)

SECTION HISTORY
1977, c. 604, §12 (NEW). 2007, c. 402, Pt. H, §9 (RP).

§506. LICENSE EXPIRATION

(REPEALED)

SECTION HISTORY
1977, c. 604, §12 (NEW). 1985, c. 748, §42 (AMD). 1989, c. 450, §9 (AMD). 1991, c. 392, §5 (AMD). 1993, c. 600, §A47 (AMD). 1995, c. 397, §27 (AMD). 2005, c. 262, §A2 (RP).

Subchapter 3: LICENSURE HEADING: PL 1991, C. 392, §6 (RPR)

§551. EXAMINATION AND LICENSURE

An individual, before engaging in the practice of chiropractic in this State, shall submit an application for a license to practice chiropractic together with the license fee as set under section 558. Each applicant must be at least 18 years of age and present proof of 2 years' satisfactory attendance at a college of liberal arts. A candidate for licensure shall present a transcript from an accredited college or university certifying that the candidate has completed 2 years of preprofessional work, 2 subjects of which must be English and biology, or otherwise satisfy the members of the board that the candidate has acquired sufficient prior academic education. The applicant shall present a diploma granted by a legally chartered chiropractic college, school or university in good standing and having the power to confer degrees in chiropractic, which diploma must show that it was granted on personal attendance of the applicant and completion of a course of 4 school years of not less than 8 months each and of a total of 4,400 60-minute school hours. If an applicant matriculated in a chiropractic college on or after January 1, 1984, the diploma must show that it was granted by a chiropractic college accredited by a chiropractic educational accrediting agency approved by the United States Department of Education or its successor agency or, if no accrediting agency exists, approved by the board, or the applicant must have evidence of having successfully passed a licensing procedure from another state having similar requirements. If an applicant matriculated in a chiropractic college before January 1, 1984, the diploma must show that it was granted by a chiropractic college accredited as set out in this section, or the applicant must present evidence of having become a diplomat of the National Board

of Chiropractic Examiners or of having successfully passed a licensing procedure from another state having similar requirements. Each applicant shall demonstrate trustworthiness and competence by such means as the board may require in its application form. [2007, c. 402, Pt. H, §10 (AMD).]

SECTION HISTORY
1969, c. 433, §78 (AMD). 1971, c. 598, §68 (AMD). 1973, c. 405, §1 (AMD). 1977, c. 220, §1 (AMD). 1983, c. 176, §A10 (AMD). 1987, c. 74, §1 (AMD). 1991, c. 392, §7 (AMD). 1993, c. 600, §A48 (AMD). 2005, c. 262, §A3 (AMD). 2007, c. 402, Pt. H, §10 (AMD).

§552. EXAMINATION OF APPLICANTS; SUBJECTS INCLUDED; LICENSE; ENDORSEMENT

The applicant shall submit an application for examination together with the required examination fee as set under section 558. The examination must include the subjects of anatomy, physiology, symptomatology, hygiene, sanitation, chemistry, pathology, electrotherapy, hydrotherapy, dietetics, bacteriology, chiropractic analysis, the principles and practice of chiropractic as taught in reputable chiropractic schools and colleges and any other subjects the board determines necessary. If the examination is passed in a manner satisfactory to the board, the board shall issue, upon payment of the required license fee as set under section 558, to the applicant a license granting that individual the right to practice chiropractic in this State. [2005, c. 262, Pt. A, §4 (AMD).]

The board may waive the examination requirements and grant a license to any applicant who presents proof of being licensed to practice in another jurisdiction of the United States or another country whose licensing requirements are considered by the board to be substantially equivalent to or higher than those set forth in this chapter, if no cause exists for denial of a license under section 503-B or Title 10, section 8003, subsection 5-A, paragraph A. The applicant shall pay the required license fee as set under section 558. [2007, c. 695, Pt. B, §6 (AMD).]

SECTION HISTORY
1977, c. 220, §2 (AMD). 1977, c. 694, §554 (AMD). 1983, c. 378, §5 (AMD). 1987, c. 74, §2 (AMD). 1991, c. 392, §8 (AMD). 1993, c. 600, §A49 (AMD). 2005, c. 262, §A4 (AMD). 2007, c. 695, Pt. B, §6 (AMD).

§553. FEES; COMPENSATION AND EXPENSES

(REPEALED)

SECTION HISTORY
1965, c. 232, (AMD). 1973, c. 65, §§1,2 (AMD). 1977, c. 220, §3 (AMD). 1981, c. 19, (AMD). 1983, c. 812, §199 (AMD). 1987, c. 74, §3 (AMD). 1991, c. 392, §9 (RP).

§553-A. LICENSES RENEWAL PROCEDURE; CONTINUING EDUCATION

1. **Renewal procedure.** A license expires on the date set by the commissioner pursuant to Title 10, section 8003, subsection 4 for the licensing period for which the license was issued. A renewal license must be issued for each ensuing licensing period in the absence of any reason or condition that might warrant the refusal to grant a license, upon receipt by the board of the written request of the applicant and the fee for the license as set under section 558 and upon the applicant's presenting evidence of compliance with the requirements of subsection 2. An expired license may be reissued up to 90 days after the date of expiration upon payment of a late fee as set under section 558 in addition to a renewal fee as set under section 558. An individual who submits an application for renewal more than 90 days after the license expiration date is subject to all requirements governing new applicants under this chapter, including a renewal fee, late fee

and additional late fee as set under section 558, except that the board may, in its discretion and giving due consideration to the protection of the public, waive examination if that renewal application is made within 2 years from the date of that expiration.

[2007, c. 402, Pt. H, §11 (AMD) .]

2. **Continuing education.** The board shall require applicants for license renewal to submit evidence of satisfactory completion of continuing education in accordance with rules adopted by the board.

[1991, c. 392, §10 (NEW) .]

3. **Fees.**

[2005, c. 262, Pt. A, §5 (RP) .]

4. **Continuing education program approval.** Each application for approval of a continuing education program or course must be submitted according to rules adopted by board, together with a required fee as set under section 558.

[2005, c. 262, Pt. A, §5 (NEW) .]

SECTION HISTORY
1991, c. 392, §10 (NEW). 1993, c. 600, §A50 (AMD). 1995, c. 502, §H22 (AMD). 1999, c. 386, §E1 (AMD). 2005, c. 262, §A5 (AMD). 2007, c. 402, Pt. H, §11 (AMD).

§554. DISPLAY OF LICENSE; RIGHTS

When the board grants to an individual the license mentioned in section 552, the license must designate the holder as a doctor of chiropractic or a chiropractor. The license entitles the individual to whom it is granted to practice chiropractic in this State in all of its branches of discipline, except obstetrics, so far as the same relates to parturition, the administering of drugs and the performance of surgical operations with the use of instruments, except as allowed by law. This section may not be construed to prohibit a legally licensed doctor of chiropractic in this State from practicing surgery after having passed a satisfactory examination before the State Board of Licensure in Medicine. [2009, c. 112, Pt. A, §3 (AMD).]

SECTION HISTORY
1983, c. 113, §2 (RPR). 1991, c. 392, §11 (AMD). 1993, c. 600, §A51 (AMD). 2007, c. 402, Pt. H, §12 (AMD). 2009, c. 112, Pt. A, §3 (AMD).

Subchapter 4: CHIROPRACTIC ASSISTANTS
HEADING: PL 1991, C. 884, §1 (NEW)

§555. ASSISTANTS

This chapter does not prohibit an individual from rendering ancillary diagnostic or therapeutic services as used in chiropractic practice, other than the adjustive or manipulative techniques, if those services are rendered under the supervision and control of a licensed chiropractor as long as that individual has successfully completed a training program recognized by the board. "Supervision and control" may not be construed as requiring the personal presence of the supervising and controlling chiropractor at the place where those services are rendered, unless physical presence is necessary to provide patient care of the same quality as provided by the chiropractor. This chapter does not prohibit a chiropractor from delegating to an employee certain activities relating to the care and treatment being performed by custom and usage when those activities are under the direct control of and in the presence of the chiropractor. The chiropractor

delegating those activities to an employee, to a program graduate or to a participant in an approved training program is legally liable for those activities performed by such an individual and that individual is considered to be the chiropractor's agent. [1993, c. 600, Pt. A, §52 (AMD).]

SECTION HISTORY
1991, c. 884, §1 (NEW). 1993, c. 600, §A52 (AMD).

§556. LICENSE

An individual may not render ancillary services under section 555 until that individual has received a chiropractic assistant license or a temporary license issued by the board, either of which is renewable. The applicant must pay a license fee as set under section 558. The board shall adopt rules regarding the training and licensure of individuals permitted to render ancillary services under section 555. [2007, c. 402, Pt. H, §13 (AMD).]

SECTION HISTORY
1991, c. 884, §1 (NEW). 1993, c. 600, §A52 (AMD). 2005, c. 262, §A6 (AMD). 2007, c. 402, Pt. H, §13 (AMD).

§557. TERMINATION OF LICENSE

The sanctions of sections 454 and 503-B apply to individuals who render any ancillary services under section 555 and who: [2007, c. 402, Pt. H, §14 (AMD).]

1. **Misrepresentation.** Profess to be or permit themselves to be represented as licensed chiropractors;

[1991, c. 884, §1 (NEW) .]

2. **Nonsupervision.** Perform other than at the direction and under the supervision of a chiropractor licensed by the board; or

[1991, c. 884, §1 (NEW) .]

3. **Inadequate training.** Perform a task that they have not been trained or are not clinically competent to perform.

[1991, c. 884, §1 (NEW) .]

SECTION HISTORY
1991, c. 884, §1 (NEW). 2007, c. 402, Pt. H, §14 (AMD).

§558. FEES

The Director of the Office of Professional and Occupational Regulation within the department may establish by rule fees for purposes authorized under this chapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for any one purpose may not exceed $250 annually. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2009, c. 241, Pt. B, §1 (AMD); 2011, c. 286, Pt. B, §5 (REV).]

SECTION HISTORY
1991, c. 884, §1 (NEW). 1993, c. 600, §A52 (AMD). 1995, c. 502, §H23 (AMD). 2005, c. 262, §A7 (RPR). 2007, c. 402, Pt. H, §15 (AMD). 2009, c. 241, Pt. B, §1 (AMD). 2011, c. 286, Pt. B, §5 (REV).

Chapter 10: COLLECTION AGENCIES

§571. DEFINITIONS

(REPEALED)

SECTION HISTORY
1965, c. 430, §1 (NEW). 1973, c. 585, §11 (AMD). 1975, c. 381, §6 (AMD). 1981, c. 501, §§53-55 (AMD). 1985, c. 702, §1 (RP).

§572. EXCLUSIONS

(REPEALED)

SECTION HISTORY
1965, c. 430, §1 (NEW). 1985, c. 702, §1 (RP).

§573. LICENSES

(REPEALED)

SECTION HISTORY
1965, c. 430, §1 (NEW). 1971, c. 81, §§1,2 (AMD). 1973, c. 585, §11 (AMD). 1973, c. 788, §153 (AMD). 1975, c. 486, §1 (AMD). 1975, c. 767, §24 (AMD). 1983, c. 120, §§1,2 (AMD). 1985, c. 702, §1 (RP).

§574. BOND

(REPEALED)

SECTION HISTORY
1965, c. 430, §1 (NEW). 1973, c. 585, §11 (AMD). 1975, c. 381, §6 (AMD). 1981, c. 501, §56 (AMD). 1985, c. 702, §1 (RP).

§575. PRIOR CONVICTIONS AS DISQUALIFICATIONS

(REPEALED)

SECTION HISTORY
1965, c. 430, §1 (NEW). 1985, c. 702, §1 (RP).

§576. PROHIBITED PRACTICES

(REPEALED)

SECTION HISTORY
1965, c. 430, §1 (NEW). 1967, c. 205, (AMD). 1981, c. 456, §A106 (AMD). 1985, c. 702, §1 (RP).

§576-A. CIVIL PENALTY

(REPEALED)

SECTION HISTORY
1983, c. 120, §3 (NEW). 1985, c. 702, §1 (RP).

§577. APPLICATION IN CASE OF PRETENDED PURCHASE OR ASSIGNMENT

(REPEALED)

SECTION HISTORY
1965, c. 430, §1 (NEW). 1985, c. 702, §1 (RP).

§578. INVESTIGATION, SUSPENSION AND REVOCATION OF LICENSES

(REPEALED)

SECTION HISTORY
1965, c. 430, §1 (NEW). 1973, c. 585, §11 (AMD). 1975, c. 381, §6 (AMD). 1975, c. 486, §2 (RPR). 1977, c. 694, §554A (RPR). 1981, c. 501, §57 (AMD). 1985, c. 702, §1 (RP).

§579. APPEALS

(REPEALED)

SECTION HISTORY
1965, c. 430, §1 (NEW). 1967, c. 494, §25 (AMD). 1967, c. 544, §77 (AMD). 1973, c. 585, §11 (AMD). 1975, c. 381, §6 (AMD). 1975, c. 486, §3 (RPR). 1977, c. 694, §554B (RP).

§580. REPORTS AND RECORDS

(REPEALED)

SECTION HISTORY
1965, c. 430, §1 (NEW). 1973, c. 585, §11 (AMD). 1983, c. 120, §4 (AMD). 1985, c. 702, §1 (RP).

§581. DELINQUENT COLLECTION AGENCIES

(REPEALED)

SECTION HISTORY
1965, c. 430, §1 (NEW). 1973, c. 585, §11 (AMD). 1985, c. 702, §1 (RP).

§582. RULE MAKING POWER

(REPEALED)

SECTION HISTORY
1965, c. 430, §1 (NEW). 1973, c. 585, §11 (AMD). 1977, c. 564, §119 (AMD). 1977, c. 694, §554C (AMD). 1977, c. 696, §234 (AMD). 1979, c. 127, §176 (AMD). 1981, c. 698, §155 (AMD). 1985, c. 702, §1 (RP).

§583. CREDIT AND COLLECTION BOARD

(REPEALED)

SECTION HISTORY
1965, c. 430, §1 (NEW). 1973, c. 585, §11 (AMD). 1975, c. 633, (RP).

§584. FEES

(REPEALED)

SECTION HISTORY
1975, c. 486, §4 (NEW). 1981, c. 501, §58 (AMD). 1985, c. 702, §1 (RP).

Chapter 11: COSMETICIANS

Subchapter 1: GENERAL PROVISIONS

§601. "COSMETIC PREPARATIONS" DEFINED

(REPEALED)

SECTION HISTORY
1977, c. 83, §5 (RP).

§602. PENALTY

(REPEALED)

SECTION HISTORY
1977, c. 83, §5 (RP).

Subchapter 2: REGISTRATION

§651. REGISTRATION

(REPEALED)

SECTION HISTORY
1977, c. 83, §5 (RP).

§652. CERTIFICATE OF REGISTRATION

(REPEALED)

SECTION HISTORY
1977, c. 83, §5 (RP).

Subchapter 3: ADMINISTRATION

§701. COSMETIC PREPARATIONS FOR UNLAWFUL SALE OR USE FORFEITED

(REPEALED)

SECTION HISTORY
1977, c. 83, §5 (RP).

§702. DUTY OF OFFICER OR DULY AUTHORIZED AGENT OF THE DEPARTMENT

(REPEALED)

SECTION HISTORY
1977, c. 83, §5 (RP).

§703. FORFEITURE WHEN NO CLAIMANT APPEARS; PROCEEDINGS WHEN CLAIMANT ADMITTED AS PARTY

(REPEALED)

SECTION HISTORY
1977, c. 83, §5 (RP).

Chapter 13: DEALERS IN SECURITIES

Subchapter 1: GENERAL PROVISIONS

§751. TITLE

(REPEALED)

SECTION HISTORY
1967, c. 484, §1 (AMD). 1973, c. 111, (AMD). 1973, c. 212, §1 (AMD). 1977, c. 696, §235 (AMD). 1979, c. 697, §§1-3 (AMD). 1981, c. 448, §1 (RPR). 1985, c. 400, §1 (RP).

§751-A. DEFINITIONS

(REPEALED)

SECTION HISTORY
1981, c. 448, §2 (NEW). 1985, c. 400, §1 (RP).

§752. SERVICE OF NOTICES

(REPEALED)

SECTION HISTORY
1973, c. 585, §11 (AMD). 1981, c. 448, §3 (AMD). 1985, c. 400, §1 (RP).

§753. APPEALS

(REPEALED)

SECTION HISTORY
1973, c. 585, §11 (AMD). 1977, c. 694, §555 (RPR). 1985, c. 400, §1 (RP).

§754. PENALTIES AND ENFORCEMENT PROVISIONS

(REPEALED)

SECTION HISTORY
1967, c. 484, §2 (AMD). 1973, c. 585, §11 (AMD). 1981, c. 448, §4 (RPR). 1985, c. 400, §1 (RP).

§755. FRAUDULENT AND OTHER PROHIBITED PRACTICES

(REPEALED)

SECTION HISTORY
1967, c. 484, §3 (NEW). 1985, c. 400, §1 (RP).

§756. RULES AND REGULATIONS

(REPEALED)

SECTION HISTORY
1967, c. 484, §4 (NEW). 1973, c. 585, §11 (AMD). 1977, c. 694, §556 (AMD). 1981, c. 448, §§5,6 (AMD). 1985, c. 400, §1 (RP).

Subchapter 2: BANK SUPERINTENDENT

§801. DIRECTOR OF SECURITIES DIVISION; EXAMINERS

(REPEALED)

SECTION HISTORY
1967, c. 484, §5 (AMD). 1973, c. 585, §11 (AMD). 1985, c. 389, §11 (RP). 1985, c. 400, §1 (RP).

§802. LIST OF DEALERS

(REPEALED)

SECTION HISTORY
1973, c. 585, §11 (AMD). 1975, c. 767, §25 (RPR). 1981, c. 448, §7 (AMD). 1981, c. 698, §156 (AMD). 1983, c. 599, §1 (RPR). 1985, c. 400, §1 (RP).

§803. LIST OF SECURITIES; STATEMENT OF ASSETS AND EARNINGS

(REPEALED)

SECTION HISTORY
1967, c. 484, §6 (AMD). 1973, c. 585, §11 (AMD). 1985, c. 400, §1 (RP).

§804. INFORMATION BY BANK COMMISSIONER TO ADVISORY COMMITTEE

(REPEALED)

SECTION HISTORY
1967, c. 484, §7 (RP). 1985, c. 400, §1 (RP).

§805. REVOCATION OR SUSPENSION; DEALER'S REGISTRATION

(REPEALED)

SECTION HISTORY
1973, c. 585, §11 (AMD). 1977, c. 694, §557 (AMD). 1981, c. 448, §8 (RPR). 1983, c. 599, §2 (AMD). 1985, c. 400, §1 (RP).

§806. REVOCATION OR SUSPENSION; AGENT'S REGISTRATION

(REPEALED)

SECTION HISTORY
1973, c. 585, §11 (AMD). 1977, c. 694, §558 (AMD). 1981, c. 448, §8 (RPR). 1983, c. 599, §3 (AMD). 1985, c. 400, §1 (RP).

§807. EXEMPTIONS

(REPEALED)

SECTION HISTORY
1973, c. 55, §1 (NEW). 1973, c. 585, §11 (AMD). 1981, c. 448, §9 (AMD). 1985, c. 400, §1 (RP).

Subchapter 3: REGISTRATION

§851. REGISTRATION REQUIRED

(REPEALED)

SECTION HISTORY
1973, c. 55, §2 (AMD). 1981, c. 448, §10 (AMD). 1985, c. 400, §1 (RP).

§852. DEALER APPLICATION

(REPEALED)

SECTION HISTORY
1967, c. 484, §8 (AMD). 1973, c. 585, §11 (AMD). 1981, c. 448, §11 (RPR). 1983, c. 599, §4 (AMD). 1985, c. 400, §1 (RP).

§853. FEES

(REPEALED)

SECTION HISTORY
1973, c. 585, §11 (AMD). 1975, c. 767, §26 (RPR). 1981, c. 448, §12 (RPR). 1983, c. 599, §5 (RPR). 1985, c. 400, §1 (RP).

§854. EXPIRATION OF REGISTRATION

(REPEALED)

SECTION HISTORY
1973, c. 585, §11 (AMD). 1975, c. 767, §27 (RPR). 1981, c. 448, §12A (RPR). 1983, c. 553, §46 (AMD). 1983, c. 599, §6 (RPR). 1985, c. 400, §1 (RP).

§855. USE OF EVIDENCE OF REGISTRATION

(REPEALED)

SECTION HISTORY
1973, c. 585, §11 (AMD). 1981, c. 448, §13 (AMD). 1983, c. 599, §7 (RPR). 1985, c. 400, §1 (RP).

§856. AGENTS; APPLICATION; EXAMINATIONS

(REPEALED)

SECTION HISTORY
1967, c. 484, §9 (AMD). 1973, c. 585, §11 (AMD). 1975, c. 767, §§28,29 (AMD). 1981, c. 448, §§14-18 (AMD). 1983, c. 553, §46 (AMD). 1983, c. 599, §§8-10 (AMD). 1985, c. 400, §1 (RP).

§857. EXEMPTED DEALERS

(REPEALED)

SECTION HISTORY
1973, c. 212, §2 (NEW). 1979, c. 697, §7 (AMD). 1985, c. 400, §1 (RP).

Subchapter 4: REGISTRATION OF SECURITIES

§871. REGISTRATION OF SECURITIES; NOTICE OF INTENTION TO SELL

(REPEALED)

SECTION HISTORY
1967, c. 291, §1 (NEW). 1967, c. 484, §10 (NEW). 1967, c. 544, §79 (RP). 1973, c. 55, §3 (AMD). 1973, c. 57, (AMD). 1973, c. 585, §11 (AMD). 1973, c. 625, §211 (AMD). 1979, c. 697, §8 (AMD). 1981, c. 448, §19 (AMD). 1985, c. 400, §1 (RP).

§872. INVESTIGATIONS; DENIAL OR REVOCATION OF REGISTRATION OF SECURITIES

(REPEALED)

SECTION HISTORY
1967, c. 291, §1 (NEW). 1967, c. 484, §10 (NEW). 1967, c. 544, §79 (RP). 1973, c. 585, §11 (AMD). 1977, c. 694, §559 (RPR). 1981, c. 448, §20 (AMD). 1983, c. 657, (AMD). 1985, c. 400, §1 (RP).

§873. EXEMPT SECURITIES

(REPEALED)

SECTION HISTORY
1967, c. 291, §1 (NEW). 1967, c. 484, §10 (NEW). 1967, c. 544, §78 (AMD). 1967, c. 544, §79 (RP). 1973, c. 585, §11 (AMD). 1979, c. 697, §4 (AMD). 1981, c. 448, §§21,22 (AMD). 1985, c. 400, §1 (RP).

§874. EXEMPTED TRANSACTIONS AND DISTRIBUTIONS

(REPEALED)

SECTION HISTORY
1967, c. 291, §1 (NEW). 1967, c. 484, §10 (NEW). 1967, c. 544, §79 (RP). 1973, c. 212, §3 (AMD). 1973, c. 585, §11 (AMD). 1975, c. 158, (AMD). 1977, c. 474, §§1,2 (AMD). 1979, c. 697, §5 (RP).

§874-A. EXEMPTED TRANSACTIONS AND DISTRIBUTIONS

(REPEALED)

SECTION HISTORY
1979, c. 697, §6 (NEW). 1981, c. 448, §23 (AMD). 1985, c. 400, §1 (RP).

Subchapter 5: CIVIL LIABILITIES

§881. CIVIL LIABILITIES

(REPEALED)

SECTION HISTORY
1967, c. 291, §1 (NEW). 1967, c. 484, §10 (NEW). 1967, c. 544, §79 (RP). 1981, c. 448, §24 (AMD). 1985, c. 400, §1 (RP).

Subchapter 6: NEGOTIABLE CHECKS AND MONEY ORDERS (HEADING: PL 1997, C. 155, PT. A, §1 (RP))

§891. SALE OF NEGOTIABLE CHECKS AND MONEY ORDERS

(REPEALED)

SECTION HISTORY
1967, c. 291, §1 (NEW). 1967, c. 544, §79 (RP). 1975, c. 500, §2 (NEW). 1975, c. 666, §32 (AMD). 1975, c. 767, §30 (AMD). 1989, c. 17, §§1,2 (AMD). 1995, c. 309, §21 (AMD). 1995, c. 309, §29 (AFF). 1997, c. 155, §A3 (AFF). 1997, c. 155, §A1 (RP).

Chapter 14: DENTISTS AND DENTAL HYGIENISTS

Subchapter 1: GENERAL PROVISIONS (HEADING: PL 1967, C. 291, §1 (NEW); PL 1967, C. 544, §79 (RP))

§861. CHANGE OF ADDRESS

(REPEALED)

SECTION HISTORY
1967, c. 291, §1 (NEW). 1967, c. 544, §79 (RP).

§862. INJUNCTION; PROCEDURE

(REPEALED)

SECTION HISTORY
1967, c. 291, §1 (NEW). 1967, c. 544, §79 (RP).

Subchapter 2: BOARD OF DENTAL EXAMINERS

§871. MEMBERSHIP; APPOINTMENT; VACANCIES; REMOVAL; NOMINATIONS; COMPENSATION

(REPEALED)

SECTION HISTORY
1967, c. 291, §1 (NEW). 1967, c. 544, §79 (RP).

§872. ELECTIONS; QUORUM; REPORTS; RECORDS; TREASURER; EXPENSES

(REPEALED)

SECTION HISTORY
1967, c. 291, §1 (NEW). 1967, c. 544, §79 (RP).

§873. COMPLAINTS

(REPEALED)

SECTION HISTORY
1967, c. 291, §1 (NEW). 1967, c. 544, §79 (RP).

§874. AFFILIATION WITH AMERICAN ASSOCIATION OF DENTAL EXAMINERS

(REPEALED)

SECTION HISTORY
1967, c. 291, §1 (NEW). 1967, c. 544, §79 (RP).

Subchapter 3: DENTISTS (HEADING: PL 1967, C. 291, §1 (NEW); PL 1967, C. 544, §79 (RP))

§881. DEFINITIONS; PERSONS EXCEPTED

(REPEALED)

SECTION HISTORY
1967, c. 291, §1 (NEW). 1967, c. 544, §79 (RP).

§882. QUALIFICATIONS

(REPEALED)

SECTION HISTORY
1967, c. 291, §1 (NEW). 1967, c. 544, §79 (RP).

§883. APPLICATION FOR EXAMINATION; SUBJECTS; REEXAMINATION

(REPEALED)

SECTION HISTORY
1967, c. 291, §1 (NEW). 1967, c. 544, §79 (RP).

§884. CERTIFICATE; FEES; REGISTRATION CARDS

(REPEALED)

SECTION HISTORY
1967, c. 291, §1 (NEW). 1967, c. 544, §79 (RP).

§885. RECIPROCITY WITH OTHER STATES; FEES

(REPEALED)

SECTION HISTORY
1967, c. 291, §1 (NEW). 1967, c. 544, §79 (RP).

§886. PERMITS FOR INTERNSHIP; REVOCATION; SUSPENSION

(REPEALED)

SECTION HISTORY
1967, c. 291, §1 (NEW). 1967, c. 544, §79 (RP).

§887. FEE FOR DUPLICATE CERTIFICATE

(REPEALED)

SECTION HISTORY
1967, c. 291, §1 (NEW). 1967, c. 544, §79 (RP).

§888. LAWFUL PRACTITIONERS

(REPEALED)

SECTION HISTORY
1967, c. 291, §1 (NEW). 1967, c. 544, §79 (RP).

§889. DRUGS OR MEDICINES PRESCRIBED

(REPEALED)

SECTION HISTORY
1967, c. 291, §1 (NEW). 1967, c. 544, §79 (RP).

§890. PRESCRIPTION REQUIRED FOR DENTAL LABORATORY

(REPEALED)

SECTION HISTORY
1967, c. 291, §1 (NEW). 1967, c. 544, §79 (RP).

§891. REVOCATION OF LICENSE

(REPEALED)

SECTION HISTORY
1967, c. 291, §1 (NEW). 1967, c. 544, §79 (RP).

§892. UNLAWFUL PRACTICE

(REPEALED)

SECTION HISTORY
1967, c. 291, §1 (NEW). 1967, c. 544, §79 (RP).

§893. FRAUDULENT SALE OR ALTERATION OF DIPLOMAS

(REPEALED)

SECTION HISTORY
1967, c. 291, §1 (NEW). 1967, c. 544, §79 (RP).

§894. PENALTIES

(REPEALED)

SECTION HISTORY
1967, c. 291, §1 (NEW). 1967, c. 544, §79 (RP).

Subchapter 4: DENTAL HYGIENISTS (HEADING: PL 1967, C. 291, §1 (NEW); PL 1967, C. 544, §79 (RP))

§895. DEFINITION

(REPEALED)

SECTION HISTORY
1967, c. 291, §1 (NEW). 1967, c. 544, §79 (RP).

§896. QUALIFICATIONS

(REPEALED)

SECTION HISTORY
1967, c. 291, §1 (NEW). 1967, c. 544, §79 (RP).

§897. APPLICATION AND FEE

(REPEALED)

SECTION HISTORY
1967, c. 291, §1 (NEW). 1967, c. 544, §79 (RP).

§898. CERTIFICATE; ANNUAL FEE

(REPEALED)

SECTION HISTORY
1967, c. 291, §1 (NEW). 1967, c. 544, §79 (RP).

§899. RECIPROCITY

(REPEALED)

SECTION HISTORY
1967, c. 291, §1 (NEW). 1967, c. 544, §79 (RP).

§900. USE OF FORMER EMPLOYERS' LISTS; REVOCATION OR SUSPENSION OF LICENSE

(REPEALED)

SECTION HISTORY
1967, c. 291, §1 (NEW). 1967, c. 544, §79 (RP).

Chapter 15: DENTISTS AND DENTAL HYGIENISTS

Subchapter 1: GENERAL PROVISIONS

§901. CHANGE OF ADDRESS

(REPEALED)

SECTION HISTORY
1967, c. 291, §3 (RP).

§902. INJUNCTION; PROCEDURE

(REPEALED)

SECTION HISTORY
1967, c. 291, §3 (RP).

§903. POWER TO ISSUE SUBPOENAS; SERVICE; OATHS

(REPEALED)

SECTION HISTORY
1967, c. 291, §3 (RP).

Subchapter 2: BOARD OF DENTAL EXAMINERS

§951. MEMBERSHIP; APPOINTMENT; VACANCIES; REMOVAL; NOMINATIONS; COMPENSATION

(REPEALED)

SECTION HISTORY
1967, c. 291, §3 (RP).

§952. ELECTIONS; QUORUM; REPORTS; RECORDS; TREASURER; EXPENSES

(REPEALED)

SECTION HISTORY
1967, c. 291, §3 (RP).

§953. INVESTIGATION OF COMPLAINTS

(REPEALED)

SECTION HISTORY
1967, c. 291, §3 (RP).

§954. AFFILIATION WITH AMERICAN ASSOCIATION OF DENTAL EXAMINERS

(REPEALED)

SECTION HISTORY
1967, c. 291, §3 (RP).

Subchapter 3: DENTISTS

§1001. DEFINITIONS; PERSONS EXCEPTED

(REPEALED)

SECTION HISTORY
1967, c. 291, §3 (RP).

§1002. QUALIFICATIONS

(REPEALED)

SECTION HISTORY
1967, c. 291, §3 (RP).

§1003. APPLICATION FOR EXAMINATION; SUBJECTS; REEXAMINATION

(REPEALED)

SECTION HISTORY
1967, c. 291, §3 (RP).

§1004. CERTIFICATES; FEES; REGISTRATION CARDS

(REPEALED)

SECTION HISTORY
1967, c. 291, §3 (RP).

§1005. RECIPROCITY WITH OTHER STATES; FEES

(REPEALED)

SECTION HISTORY
1967, c. 291, §3 (RP).

§1006. FEES FOR DUPLICATE CERTIFICATES

(REPEALED)

SECTION HISTORY
1967, c. 291, §3 (RP).

§1007. LAWFUL PRACTITIONERS

(REPEALED)

SECTION HISTORY
1967, c. 291, §3 (RP).

§1008. DRUGS OR MEDICINES PRESCRIBED

(REPEALED)

SECTION HISTORY
1967, c. 291, §3 (RP).

§1009. REVOCATION OF CERTIFICATES; MISREPRESENTATION

(REPEALED)

SECTION HISTORY
1967, c. 291, §3 (RP).

§1010. HEARINGS

(REPEALED)

SECTION HISTORY
1967, c. 291, §3 (RP).

§1011. CONVICTION CERTIFIED

(REPEALED)

SECTION HISTORY
1967, c. 291, §3 (RP).

§1012. UNLAWFUL PRACTICE

(REPEALED)

SECTION HISTORY
1967, c. 291, §3 (RP).

§1013. FRAUDULENT SALE OR ALTERATION OF DIPLOMAS

(REPEALED)

SECTION HISTORY
1967, c. 291, §3 (RP).

§1014. PENALTIES

(REPEALED)

SECTION HISTORY
1967, c. 291, §3 (RP).

Subchapter 4: DENTAL HYGIENISTS

§1051. EXAMINATION; QUALIFICATIONS; FEES

(REPEALED)

SECTION HISTORY
1967, c. 291, §3 (RP).

§1052. RECIPROCITY WITH OTHER STATES; FEES

(REPEALED)

SECTION HISTORY
1967, c. 291, §3 (RP).

§1053. PERMITS FOR INTERNSHIP; REVOCATION; SUSPENSION; SPECIAL PERMITS

(REPEALED)

SECTION HISTORY
1967, c. 291, §3 (RP).

§1054. AUTHORIZED ACTS; PENALTY FOR EXCEEDING

(REPEALED)

SECTION HISTORY
1965, c. 239, (RPR). 1967, c. 291, §3 (RP).

§1055. USE OF FORMER EMPLOYERS' LISTS; REVOCATION OR SUSPENSION OF LICENSE

(REPEALED)

SECTION HISTORY
1967, c. 291, §3 (RP).

Chapter 16: DENTISTS AND DENTAL HYGIENISTS

Subchapter 1: GENERAL PROVISIONS

§1061. ADDRESSES AND CHANGE OF ADDRESS

1. **Furnish to board.** Every licensee under this chapter shall:

A. Furnish the secretary of the board with the place or places of practice; and [1981, c. 440, §1 (NEW).]

B. Upon a change of name or registered address or addresses, furnish the secretary-treasurer of the board with the new address within 30 days of the change. [1981, c. 440, §1 (NEW).]

[1981, c. 440, §1 (NEW) .]

2. **Failure; fee.** For failure to comply with this section, a licensee is subject to a fee imposed by the board of not more than $25.

[1993, c. 600, Pt. A, §53 (AMD) .]

SECTION HISTORY
1967, c. 544, §80 (NEW). 1981, c. 440, §1 (RPR). 1993, c. 600, §A53 (AMD).

§1062. INJUNCTION; PROCEDURE

(REPEALED)

SECTION HISTORY
1967, c. 544, §80 (NEW). 1973, c. 303, §3 (AMD). 1993, c. 600, §A54 (RP).

§1062-A. PENALTIES; INJUNCTION

1. **Penalties.** A person who practices or falsely claims legal authority to practice dentistry, dental hygiene, independent practice dental hygiene, denturism or dental radiography in this State without first obtaining a license as required by this chapter, or after the license has expired, has been suspended or revoked or has been temporarily suspended or revoked, commits a Class E crime. Violation of this subsection is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

[2011, c. 184, §1 (AMD) .]

2. **Injunction.** The State may bring an action in Superior Court to enjoin a person for violating this chapter, regardless of whether proceedings have been or may be instituted in the District Court or whether criminal proceedings have been or may be instituted.

[1993, c. 600, Pt. A, §55 (NEW); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

SECTION HISTORY
1993, c. 600, §A55 (NEW). RR 1995, c. 2, §79 (COR). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 620, Pt. C, §1 (AMD). 2011, c. 184, §1 (AMD).

Subchapter 2: BOARD OF DENTAL EXAMINERS

§1071. MEMBERSHIP; APPOINTMENT; VACANCIES; REMOVAL; NOMINATIONS; COMPENSATION

The Board of Dental Examiners, established by Title 5, section 12004-A, subsection 10, and in this chapter called the "board," consists of 9 members, appointed by the Governor as follows: five members of the dental profession, 2 dental hygienists, one denturist and one representative of the public. [2003, c. 669, §1 (AMD).]

1. **Membership.** A person is not eligible for appointment to the board who has been convicted of a violation of the provisions of this or any other prior dental practice act, or who has been convicted of a crime punishable by more than one year's imprisonment. A person is not eligible for appointment to the board who has served 10 years or more on a dental examining board in this State. Appointment of members must comply with Title 10, section 8009. The Governor may remove a member of the board on proven charges of inefficiency, incompetence, immorality or unprofessional conduct.

[2007, c. 695, Pt. B, §7 (AMD) .]

2. **Dentists.** The Governor may accept nominations from the Maine Dental Association and from other organizations and individuals.

Members of the dental profession must hold a valid dental license and must have been in the actual practice of dentistry in this State for at least 10 years immediately preceding the appointment. The term for a member who is a dentist is 5 years. A dentist is not eligible to serve as a member of the board while employing a dental hygienist who is a member of the board.

[1993, c. 600, Pt. A, §56 (AMD) .]

3. **Dental hygienists.** The dental hygienists must be qualified pursuant to subchapter 4, must be legal residents of the State and must have practiced in the State for at least 6 years immediately preceding appointment. The dental hygienist members of the board are full-voting members of the board. The term for a member who is a dental hygienist is 5 years. The Governor may accept nominations from the Maine Dental Hygienists' Association and from other organizations and individuals before the appointment of a hygienist to the board. A dental hygienist is not eligible to serve as a member of the board while employed by a dentist who is a member of the board.

[2003, c. 669, §2 (AMD) .]

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.

[2001, c. 260, Pt. B, §2 (NEW) .]

4. **Public member.** The public member is appointed to a 5-year term.

[1993, c. 600, Pt. A, §56 (AMD) .]

5. **Compensation.** The members of the board are entitled to compensation according to the provisions of Title 5, chapter 379. Expenses of the board members must be certified by the secretary of the board.

[1993, c. 600, Pt. A, §56 (AMD) .]

SECTION HISTORY
1967, c. 544, §80 (NEW). 1975, c. 575, §11 (AMD). 1975, c. 771, §§337,338 (AMD). 1977, c. 473, §§1-3 (AMD). 1981, c. 440, §2 (RPR). 1983, c. 176, §A11 (AMD). 1983, c. 812, §§200,201 (AMD). 1989, c. 152, §2 (AMD). 1993, c. 600, §A56 (AMD). 1999, c. 124, §1 (AMD). 2001, c. 260, §§B1,2 (AMD). 2003, c. 669, §§1,2 (AMD). 2007, c. 695, Pt. B, §7 (AMD).

§1072. ELECTIONS; QUORUM; REPORTS; RECORDS; TREASURER; EXPENSES

At its annual meeting, the board shall elect from among its members a president, a vice-president and a secretary-treasurer. Five members constitute a quorum. The board shall have a common seal. At a time and place to be fixed by the board, the board shall hold at least one regular meeting each year and special meetings as necessary. The board may recognize nationally or regionally administered examinations given at least annually for applicants to practice dentistry in the State. The board may make rules, not contrary to law, necessary for the performance of its duties. On or before August 1st, the board shall annually make a report of its proceedings to the Commissioner of Professional and Financial Regulation. The secretary-treasurer of the board shall keep records of all proceedings of the board and be the custodian of these records. Records that constitute and are recognized as the official records of the board must be open for public inspection at reasonable times. [1993, c. 600, Pt. A, §57 (RPR).]

The secretary-treasurer of the board shall collect all fees, charges and assessments payable to the board and account for and pay them according to law. The secretary-treasurer is entitled to receive an annual salary, to be fixed by the board, in lieu of per diem compensation. The secretary-treasurer is entitled to necessary expenses incurred in the discharge of official duties, including clerical and stenographic assistance, printing and postage. The allowance for expenses must be certified by the president of the board. [1993, c. 600, Pt. A, §57 (RPR).]

SECTION HISTORY
1967, c. 544, §80 (NEW). 1975, c. 484, §§1,2 (AMD). 1975, c. 575, §12 (AMD). 1977, c. 473, §4 (AMD). 1977, c. 604, §13 (AMD). 1985, c. 748, §42 (AMD). 1989, c. 152, §3 (AMD). 1993, c. 600, §A57 (RPR).

§1073. POWERS

The board may: [1983, c. 378, §6 (RPR).]

1. **Employees and offices; funds.** Employ persons to assist in carrying out its duties in the administration and enforcement of this chapter; provide offices, furniture, fixtures, supplies or printing; and expend funds as determined necessary;

[1993, c. 600, Pt. A, §58 (AMD) .]

2. **Rules.** Adopt rules in accordance with the Maine Administrative Procedure Act that are necessary for the implementation of this chapter. The rules may include, but need not be limited to, requirements for licensure, interviews for licensing and renewal, continuing education, inactive licensure status, use of general anesthesia and fees for providing a list of addresses of licensed professionals upon request;

[1997, c. 107, §4 (AMD) .]

3. **False advertising.** Establish rules relating to false, deceptive or misleading advertising, except that no rules may be inconsistent with any rule promulgated pursuant to Title 5, section 207, subsection 2; and

[1997, c. 107, §5 (AMD) .]

4. **Protocols for professional review committee.** Establish protocols for the operation of a professional review committee as defined in Title 24, section 2502, subsection 4-A. The protocols must include the committee reporting information the board considers appropriate regarding reports received, contracts or investigations made and the disposition of each report, provided that the committee is not required to disclose any personally identifiable information. The protocols may not prohibit an impaired dentist from seeking alternative forms of treatment.

[1997, c. 107, §6 (NEW) .]

SECTION HISTORY
1967, c. 544, §80 (NEW). 1977, c. 458, §3 (AMD). 1983, c. 378, §6 (RPR). 1989, c. 90, §1 (AMD). 1993, c. 600, §§A58,59 (AMD). 1997, c. 107, §§4-6 (AMD).

§1074. AFFILIATION WITH AMERICAN ASSOCIATION OF DENTAL BOARDS

The board may affiliate with the American Association of Dental Boards or its successor as an active member and pay regular dues to that association and may send one or more delegates to the meetings of the American Association of Dental Boards or its successor. These delegates are entitled to receive compensation provided for in section 1071. [2011, c. 184, §2 (AMD).]

SECTION HISTORY
1967, c. 544, §80 (NEW). 1993, c. 600, §A60 (AMD). 2005, c. 45, §1 (AMD). 2011, c. 184, §2 (AMD).

§1075. LIAISON; LIMITATIONS

On or before August 1st of each year, the board shall submit to the Commissioner of Professional and Financial Regulation, for the preceding fiscal year ending June 30th, its annual report of its operations and financial position, together with comments and recommendations the board considers essential. [1993, c. 600, Pt. A, §61 (AMD).]

The commissioner shall act as a liaison between the board and the Governor. [1977, c. 604, §14 (NEW).]

The commissioner may not exercise or interfere with the exercise of discretionary, regulatory or licensing authority granted by law to the board. The commissioner may require the board to be accessible to the public for complaints and questions during regular business hours and to provide any information the commissioner requires in order to ensure that the board is operating administratively within the requirements of this chapter. [1995, c. 462, Pt. A, §55 (RPR).]

SECTION HISTORY
1977, c. 604, §14 (NEW). 1985, c. 748, §42 (AMD). 1993, c. 600, §A61 (AMD). 1993, c. 659, §B4 (AMD). 1995, c. 462, §A55 (AMD).

§1076. BUDGET

The board shall submit to the Commissioner of Professional and Financial Regulation its budgetary requirements in the same manner as is provided in Title 5, section 1665, and the commissioner shall in turn transmit these requirements to the Bureau of the Budget without any revision, alteration or change, unless

alterations are mutually agreed upon by the department and the board or the board's designee. The budget submitted by the board to the commissioner must be sufficient to enable the board to comply with this subchapter. [1993, c. 659, Pt. B, §5 (AMD).]

SECTION HISTORY
1977, c. 604, §14 (NEW). 1985, c. 748, §42 (AMD). 1993, c. 659, §B5 (AMD).

§1077. DISCIPLINARY ACTIONS

1. **Disciplinary proceedings and sanctions.** Regarding noncompliance with or violation of this chapter or of rules adopted by the board, the board shall investigate a complaint on its own motion or upon receipt of a written complaint filed with the board.

The board shall notify the licensee of the content of a complaint filed against the licensee as soon as possible, but no 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 the complaint 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, 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 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. With the consent of the licensee, enter into a consent agreement that takes any action authorized by Title 10, section 8003, subsection 5 or Title 10, section 8003-D. 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; [2011, c. 581, §1 (AMD).]

B. In consideration for acceptance of a voluntary surrender of the license, if a consent agreement is signed by the board, the licensee and the Attorney General's office, negotiate stipulations, including terms and conditions for reinstatement, that ensure protection of the public health and safety and that serve to rehabilitate or educate the licensee; [1993, c. 600, Pt. A, §62 (AMD).]

C. If the board concludes that denial of initial licensure or modification or nonrenewal of an existing license is in order, the board may refer the complaint to a dental adjudicatory panel, convened pursuant to section 1080, for the purpose of holding an adjudicatory hearing in accordance with the provisions of the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter 4; or [2011, c. 581, §1 (AMD).]

D. If the board concludes that suspension or revocation of the license is in order, the board may file a complaint in the District Court in accordance with Title 4, chapter 5. [2011, c. 581, §1 (AMD).]

Notwithstanding any other provision of law, a dental adjudicatory panel convened pursuant to section 1080 has the sole authority to hold an adjudicatory hearing conforming to the requirements of Title 5, chapter 375, subchapter 4 and take any action authorized by Title 10, section 8003, subsection 5 or Title 10, section 8003-D following an adjudicatory hearing.

Notwithstanding Title 10, section 8003, subsection 5, any nonconsensual revocation of a license by a dental adjudicatory panel pursuant to Title 10, section 8003 may be imposed only after a hearing conforming to the requirements of Title 5, section 375, subchapter 4 and is subject to judicial review exclusively in the Superior

Court in accordance with Title 5, chapter 375, subchapter 7. The board retains the authority to take any other action pursuant to this section and Title 10, section 8003 regarding the disposition of any complaint that does not involve an adjudicatory hearing.

[2011, c. 581, §1 (AMD) .]

2. **Grounds for discipline.** The board may suspend or revoke a license pursuant to Title 5, section 10004. The following are grounds for an action to refuse to issue, modify, suspend, revoke or refuse to renew the license of a person licensed under this chapter:

A. The practice of fraud or deceit in obtaining a license under this chapter or in connection with service rendered within the scope of the license issued; [1983, c. 378, §7 (NEW).]

B. Misuse of alcohol, drugs or other substances that has resulted or may result in the licensee performing services in a manner that endangers the health or safety of patients; [2013, c. 105, §4 (AMD).]

C. A professional diagnosis of a mental or physical condition that has resulted or may result in the licensee performing services in a manner that endangers the health or safety of patients; [1993, c. 600, Pt. A, §62 (AMD).]

D. Aiding or abetting the practice of a dental profession by an individual who is not licensed under this chapter and who claims to be legally licensed; [1993, c. 600, Pt. A, §62 (AMD).]

E. Incompetence in the practice for which the licensee is licensed. A licensee is considered incompetent in the practice if the licensee has:

(1) Engaged in conduct that evidences a lack of ability or fitness to perform the duties owed by the licensee to a client or patient or the general public; or

(2) Engaged in conduct that evidences a lack of knowledge or inability to apply principles or skills to carry out the practice for which the licensee is licensed; [1993, c. 600, Pt. A, §62 (AMD).]

F. Unprofessional conduct. A licensee is considered to have engaged in unprofessional conduct if the licensee violates a standard of professional behavior that has been established in the practice for which the licensee is licensed; [1993, c. 600, Pt. A, §62 (AMD).]

G. Subject to the limitations of Title 5, chapter 341, conviction of a crime that involves dishonesty or false statement or that relates directly to the practice for which the licensee is licensed, or conviction of a crime for which incarceration for one year or more may be imposed; [1993, c. 600, Pt. A, §62 (AMD).]

H. A violation of this chapter or a rule adopted by the board; or [1993, c. 600, Pt. A, §62 (AMD).]

I. Engaging in false, misleading or deceptive advertising. [1983, c. 378, §7 (NEW).]

[2013, c. 105, §4 (AMD) .]

SECTION HISTORY
1983, c. 378, §7 (NEW). 1993, c. 600, §A62 (AMD). 1999, c. 547, §B60 (AMD). 1999, c. 547, §B80 (AFF). RR 2009, c. 2, §87 (COR). 2011, c. 581, §1 (AMD). 2013, c. 105, §4 (AMD).

§1078. SUBCOMMITTEE ON DENTURISTS

The Subcommittee on Denturists, referred to in this section as "the subcommittee," is established as follows. [2007, c. 620, Pt. A, §1 (AMD).]

1. **Membership.** The subcommittee consists of 5 members as follows:

A. The denturist who is a member of the board; [2003, c. 669, §3 (NEW).]

B. Two denturists, appointed by the Governor, who are qualified pursuant to subchapter 6, are legal residents of the State and, for appointments made after January 1, 2006, have practiced in the State for at least 6 years immediately preceding appointment; and [2003, c. 669, §3 (NEW).]

C. Two dentists who are members of the board, appointed by the president of the board. [2003, c. 669, §3 (NEW).]

The subcommittee shall annually elect a chair and a secretary.

[2003, c. 669, §3 (NEW) .]

2. **Terms.** Each of the 3 members of the subcommittee who also are members of the board shall serve on the subcommittee for the duration of that member's term on the board. The term of a member of the subcommittee who is not a member of the board is 5 years.

[2003, c. 669, §3 (NEW) .]

3. **Duties.** The subcommittee shall :

A. Perform an initial review of all complaints initiated pursuant to section 1077 involving denturists. Upon completion of its review of a complaint, the secretary of the subcommittee shall report to the board the subcommittee's recommended disposition of the complaint in accordance with those dispositions authorized by section 1077. Notwithstanding the provisions of section 1077, the board shall adopt the subcommittee's recommended disposition of a complaint unless no fewer than 2/3 of the board members who are present and voting vote to reject that recommended disposition; and [2007, c. 620, Pt. A, §1 (NEW).]

B. Perform an initial review of all applications for licensure as a denturist pursuant to section 1100-D and all submissions relating to continuing education of denturists pursuant to section 1100-E-1. Upon completion of its review of an application or submission, the secretary of the subcommittee shall report to the board the subcommittee’s recommended disposition of the application or submission, including issuance, renewal, denial or nonrenewal of a denturist license. Notwithstanding the provisions of section 1100-E, the board shall adopt the subcommittee’s recommended disposition of an application or submission unless no fewer than 2/3 of the board members who are present and voting vote to reject that recommended disposition. [2007, c. 2, §19 (COR).]

[2007, c. 2, §19 (COR) .]

4. **Compensation.** The members of the subcommittee are entitled to compensation according to the provisions of Title 5, chapter 379. Expenses of the subcommittee members must be certified by the secretary of the board.

[2003, c. 669, §3 (NEW) .]

SECTION HISTORY
2003, c. 669, §3 (NEW). RR 2007, c. 2, §19 (COR). 2007, c. 620, Pt. A, §1 (AMD).

§1079. SUBCOMMITTEE ON DENTAL HYGIENISTS

The Subcommittee on Dental Hygienists, referred to in this section as "the subcommittee," is established. [2007, c. 620, Pt. A, §2 (AMD).]

1. **Membership.** The subcommittee consists of 5 members:

A. A dental hygienist who is a member of the board; [2003, c. 669, §3 (NEW).]

B. Two dental hygienists, appointed by the Governor, who are qualified pursuant to subchapter 6, are legal residents of the State and have practiced in the State for at least 6 years immediately preceding appointment; and [2003, c. 669, §3 (NEW).]

C. Two dentists who are members of the board, appointed by the president of the board. [2003, c. 669, §3 (NEW).]

The subcommittee shall annually elect a chair and a secretary.

[2007, c. 620, Pt. A, §2 (AMD) .]

2. **Terms.** Each of the 3 members of the subcommittee who also are members of the board shall serve on the subcommittee for the duration of that member's term on the board. The term of a member of the subcommittee who is not a member of the board is 5 years.

[2003, c. 669, §3 (NEW) .]

3. **Duties.** The subcommittee shall:

A. Perform an initial review of all complaints initiated pursuant to section 1077 involving dental hygienists. Upon completion of its review of a complaint, the secretary of the subcommittee shall report to the board the subcommittee's recommended disposition of the complaint in accordance with those dispositions authorized by section 1077. Notwithstanding the provisions of section 1077, the board shall adopt the subcommittee's recommended disposition of a complaint unless no fewer than 2/3 of the board members who are present and voting vote to reject that recommended disposition; and [2007, c. 620, Pt. A, §2 (NEW).]

B. Perform an initial review of all applications for licensure as a dental hygienist pursuant to section 1097, all submissions relating to continuing education of dental hygienists pursuant to sections 1098-B and 1099 and all submissions relating to public health supervision status of dental hygienists as defined by board rule. Upon completion of its review of an application or submission, the secretary of the subcommittee shall report to the board the subcommittee's recommended disposition of the application or submission, including issuance, renewal, denial or nonrenewal of a dental hygienist license. Notwithstanding the provisions of section 1098, the board shall adopt the subcommittee's recommended disposition of an application or submission unless no fewer than 2/3 of the board members who are present and voting vote to reject that recommended disposition. [2007, c. 620, Pt. A, §2 (NEW).]

[2007, c. 620, Pt. A, §2 (AMD) .]

4. **Compensation.** The members of the subcommittee are entitled to compensation according to the provisions of Title 5, chapter 379. Expenses of the subcommittee members must be certified by the secretary of the board.

[2003, c. 669, §3 (NEW) .]

SECTION HISTORY
2003, c. 669, §3 (NEW). 2005, c. 289, §1 (AMD). 2007, c. 620, Pt. A, §2 (AMD).

§1080. DENTAL ADJUDICATORY PANELS

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UNTIL 9/15/14)
(WHOLE SECTION TEXT REPEALED 9/15/14)

Dental adjudicatory panels may be convened in accordance with this section. [2011, c. 581, §2 (NEW).]

1. **Purpose of panel.** The purpose of a dental adjudicatory panel, referred to in this section as "a panel," is to conduct adjudicatory hearings independent of the board after the board conducts the initial investigation of a complaint against a licensee and refers the complaint to a panel.

[2011, c. 581, §2 (NEW) .]

2. **Establishment of a pool of panel members.** The board shall establish a pool of potential panel members. The board may not select a person for the pool who has been found in violation of the dental practices laws or rules within the preceding 10 years. After selection by the board, each member of the pool is subject to review and appointment by the Governor. The pool must be composed of at least 5 dentists, 5 denturists and 5 dental hygienists licensed under this chapter and 5 public members, but if the board finds that it is beneficial to the administration of the pool, the pool may be composed of no fewer than 3 from each category. A pool member may not be a member of the board.

[2011, c. 581, §2 (NEW) .]

3. **Convening of a panel.** The board may convene a panel for a case that cannot be resolved using a consent agreement. The board shall request a member of its staff to draw names from the pool in accordance with subsection 4. A member of the board may not have a role in the drawing or selection of individuals serving on a panel. For each case, a separate panel must be created and then dissolved once it has issued its decision.

[2011, c. 581, §2 (NEW) .]

4. **Appointments for a panel.** A panel consists of 5 members appointed from the pool under subsection 2:

A. One member must be a public member; [2011, c. 581, §2 (NEW).]

B. One member must be either a denturist or a dental hygienist. A dental hygienist must be named to the first panel convened. For subsequent panels, the seat must alternate between a dental hygienist and a denturist, unless the defendant is either a denturist or a dental hygienist, in which case the member filling this seat must be of the defendant's profession; and [2011, c. 581, §2 (NEW).]

C. Three members must be dentists. [2011, c. 581, §2 (NEW).]

If the defendant is a doctor from a dental specialty, at least one of the dentists selected to the panel must, if possible, be of that specialty.

[2011, c. 581, §2 (NEW) .]

5. **Vacancy.** In the event of a vacancy on a panel, the board shall appoint a replacement member from the pool under subsection 2.

[2011, c. 581, §2 (NEW) .]

6. **Terms; vacancy.** Members of the pool serve 5-year terms. Members may be reappointed. In the event of a vacancy in the pool, the board shall select a replacement member in the same manner as the original selection subject to the provisions of subsection 2.

[2011, c. 581, §2 (NEW) .]

7. **Chair.** The members of a panel shall select a chair from among its members. Any member may serve as the chair.

[2011, c. 581, §2 (NEW) .]

8. **Duties and authority of a panel.** Upon referral of a complaint by the board pursuant to section 1077, subsection 1, paragraph C to a panel convened pursuant to subsection 3, the panel shall hold an adjudicatory hearing. Upon completion of the adjudicatory hearing, the panel shall issue a decision or order to:

A. Take any action authorized by section 1077, subsection 1; Title 10, section 8003, subsection 5; or Title 10, section 8003-D; or [2011, c. 581, §2 (NEW).]

B. Dismiss the complaint. [2011, c. 581, §2 (NEW).]

[2011, c. 581, §2 (NEW) .]

9. **Compensation.** Members of a panel are entitled to reimbursement for travel expenses.

[2011, c. 581, §2 (NEW) .]

10. **Panel meetings.** A panel shall hold its first meeting at the request of the board. Subsequent meetings must be held at the request of the chair of the panel.

[2011, c. 581, §2 (NEW) .]

11. **Quorum.** Four members of a panel constitutes a quorum.

[2011, c. 581, §2 (NEW) .]

12. **Repeal.** This section is repealed September 15, 2014.

[2011, c. 581, §2 (NEW) .]

SECTION HISTORY
2011, c. 581, §2 (NEW).

Subchapter 3: DENTISTS

§1081. DEFINITIONS; PERSONS EXCEPTED

1. **Practicing dentistry.** A person is considered to be practicing dentistry when that person performs, or attempts or professes to perform, a dental operation or oral surgery or dental service of any kind, gratuitously or for a salary, fee, money or other remuneration paid, or to be paid, directly or indirectly to the person or to any other person or agency who is a proprietor of a place where dental operations, oral surgery or dental services are performed. A person who directly or indirectly, by any means or method, takes impressions of a human tooth, teeth, jaws or performs a phase of an operation incident to the replacement of a part of a tooth; or supplies artificial substitutes for the natural teeth, or who furnishes, supplies, constructs, reproduces or repairs a prosthetic denture, bridge, appliance or any other structure to be worn in the human mouth, except on the written prescription of a duly licensed dentist; or who places dental appliances or structures in the human mouth, or adjusts or attempts or professes to adjust the same, or delivers the same to a person other than the dentist upon whose prescription the work was performed; or who professes to the public by any method to furnish, supply, construct, reproduce or repair a prosthetic denture, bridge, appliance or other structure to be worn in the human mouth, or who diagnoses or professes to diagnose, prescribes for or professes to prescribe for, treats or professes to treat, disease, pain, deformity, deficiency, injury or physical condition of the human teeth or jaws or adjacent structure, or who extracts or attempts to extract human teeth, or corrects or attempts to correct malformations of teeth or of the jaws is also considered to be practicing

dentistry. A person who repairs or fills cavities in the human teeth; or who diagnoses, makes and adjusts appliances to artificial casts or malposed teeth for treatment of the malposed teeth in the human mouth, with or without instruction; or who uses an x-ray machine for the purpose of taking dental x rays, or who gives or professes to give interpretations or readings of dental x rays; or who administers an anesthetic of any nature in connection with a dental operation; or who uses the words dentist, dental surgeon, oral surgeon or the letters D.D.S., D.M.D. or any other words, letters, title or descriptive matter that in any way represents that person as being able to diagnose, treat, prescribe or operate for a disease, pain, deformity, deficiency, injury or physical condition of the teeth or jaws or adjacent structures; or who states, or professes or permits to be stated or professed by any means or method whatsoever that the person can perform or will attempt to perform dental operations or render a diagnosis connected with dental operations is also considered to be practicing dentistry.

[2011, c. 184, §3 (AMD) .]

2. **Exemptions.** Nothing in this chapter applies to the following practices, acts and operations:

A. The practice of the profession by a licensed physician or surgeon under the laws of this State, unless that person practices dentistry as a specialty; [1993, c. 600, Pt. A, §63 (AMD).]

B. The giving by a qualified anesthetist or nurse anesthetist of an anesthetic for a dental operation; the giving by a certified registered nurse of an anesthetic for a dental operation under the direct supervision of either a licensed dentist who holds a valid anesthesia permit or a licensed physician; and the removing of sutures, the dressing of wounds, the application of dressings and bandages and the injection of drugs subcutaneously or intravenously by a certified registered nurse under the direct supervision of a licensed dentist or physician; [1993, c. 600, Pt. A, §63 (AMD).]

C. The practice of dentistry in the discharge of their official duties by graduate dentists or dental surgeons in the United States Army, Navy, Public Health Service, Coast Guard or Veterans Bureau; [1967, c. 544, §80 (NEW).]

D. The practice of dentistry by a licensed dentist of other states or countries at meetings of the Maine State Dental Association or its affiliates or other like dental organizations approved by the board, while appearing as clinicians; [1993, c. 600, Pt. A, §63 (AMD).]

E. The filling of prescriptions of a licensed dentist by any person, association, corporation or other entity for the construction, reproduction or repair of prosthetic dentures, bridges, plates or appliances to be used or worn as substitutes for natural teeth, provided that this person, association, corporation or other entity does not solicit nor advertise, directly or indirectly, by mail, card, newspaper, pamphlet, radio or otherwise, to the general public to construct, reproduce or repair prosthetic dentures, bridges, plates or other appliances to be used or worn as substitutes for natural teeth; [2007, c. 620, Pt. C, §2 (AMD).]

F. [1987, c. 402, Pt. A, §167 (RP).]

G. The taking of impressions by dental hygienists, independent practice dental hygienists or dental assistants for study purposes only; and [2007, c. 620, Pt. C, §3 (AMD).]

H. Practice by an independent practice dental hygienist pursuant to subchapter 3-B. [2007, c. 620, Pt. C, §4 (NEW).]

[2007, c. 620, Pt. C, §§2-4 (AMD) .]

3. **Proprietor.** The term proprietor, as used in this chapter, includes a person who:

A. Employs dentists or dental hygienists, independent practice dental hygienists, denturists or other dental auxiliaries in the operation of a dental office; [2007, c. 620, Pt. C, §5 (AMD).]

B. Places in possession of a dentist or a dental hygienist, independent practice dental hygienist or other dental auxiliary or other agent dental material or equipment that may be necessary for the management of a dental office on the basis of a lease or any other agreement for compensation for the use of that material, equipment or office; or [2007, c. 620, Pt. C, §5 (AMD).]

C. Retains the ownership or control of dental equipment or material or a dental office and makes the same available in any manner for the use by dentists or dental hygienists, independent practice dental hygienists or other agents, except that nothing in this subsection applies to bona fide sales of dental equipment or material secured by a chattel mortgage or retain title agreement. A person licensed to practice dentistry may not enter into arrangements with a person who is not licensed to practice dentistry, with the exception of licensed denturists and independent practice dental hygienists, or the legal guardian or personal representative of a deceased or incapacitated dentist, pursuant to the provisions of Title 13, section 732. [2007, c. 620, Pt. C, §5 (AMD).]

[2007, c. 620, Pt. C, §5 (AMD) .]

4. **Corporations; names.** A corporation may not practice, offer or undertake to practice or hold itself out as practicing dentistry. Every person practicing dentistry as an employee of another shall cause that person's name to be conspicuously displayed and kept in a conspicuous place at the entrance of the place where the practice is conducted. This subsection does not prohibit a licensed dentist from practicing dentistry as an employee of another licensed dentist in this State, as an employee of a nonprofit corporation, as an employee of a state hospital or state institution where the only remuneration is from the State or from a corporation that provides dental service for its employees at no profit to the corporation. This subsection does not prohibit the practice of dentists who have incorporated their practices pursuant to Title 13, chapter 22-A.

[2003, c. 344, Pt. D, §21 (AMD) .]

5. **Dentist of record; office manager.** Each patient in a multidentist practice must be provided with a dentist of record. The patient entering a multidentist practice, at the onset of treatment, must be informed as to the identity of the patient's dentist of record. The identity must at least consist of the name and telephone number.

Each office established or maintained in this State for the practice of dentistry by a person or persons subject to this chapter must be under the general supervision of a licensed dentist.

[1993, c. 600, Pt. A, §63 (AMD) .]

6. **Dental hygienist.** "Dental hygienist" or "independent practice dental hygienist," as used in this chapter, means a dental auxiliary licensed pursuant to subchapter 3-B or 4 who delivers preventive and educational services for the control of oral disease and the promotion of oral health within the scope of practice authorized by the person's license.

[2007, c. 620, Pt. C, §6 (NEW) .]

SECTION HISTORY
1967, c. 544, §80 (NEW). 1971, c. 159, §§1,2 (AMD). 1975, c. 484, §§3-5 (AMD). 1981, c. 440, §3 (AMD). 1983, c. 331, §1 (AMD). 1983, c. 378, §§8-10 (AMD). 1987, c. 402, §A167 (AMD). 1993, c. 600, §A63 (AMD). RR 2001, c. 2, §C7 (AFF). RR 2001, c. 2, §C6 (COR). 2001, c. 337, §2 (AMD). 2003, c. 344, §D21 (AMD). 2007, c. 210, §2 (AMD). 2007, c. 620, Pt. C, §§2-6 (AMD). 2011, c. 184, §3 (AMD).

§1082. QUALIFICATIONS

Before receiving a license to practice dentistry in this State, a person must be at least 18 years of age and must be a graduate of or have a diploma from a dental college, school or dental department of a university accredited by an agency approved by the board. [1993, c. 600, Pt. A, §64 (AMD).]

SECTION HISTORY

1967, c. 544, §80 (NEW). 1969, c. 197, §1 (RPR). 1969, c. 433, §79 (AMD). 1969, c. 590, §60 (RPR). 1971, c. 598, §69 (AMD). 1983, c. 378, §11 (AMD). 1993, c. 600, §A64 (AMD).

§1083. APPLICATION FOR EXAMINATION; SUBJECTS; REEXAMINATION

The board may at its discretion recognize the results of an examination given by the National Board of Dental Examiners or an accredited clinical testing agency approved by the board in lieu of or in addition to the examination or examinations that it may require. The board may require as part of the examination a clinical demonstration of the candidate's skill in dentistry. An applicant who fails to pass the first examination to the satisfaction of the board is entitled to one reexamination. Applicants for licensure shall pay a fee set by the board for the examination. [1993, c. 600, Pt. A, §65 (AMD).]

SECTION HISTORY
1967, c. 544, §80 (NEW). 1969, c. 197, §2 (AMD). 1981, c. 440, §§4,5 (AMD). 1993, c. 600, §A65 (AMD).

§1084. LICENSES; FEES

The board shall issue under its seal to any person who successfully meets all licensure requirements a license to practice dentistry in this State, signed by the members of the board. A dentist shall publicly exhibit the dentist's license. The license is prima facie evidence of authority to practice dentistry in this State, except that it is unlawful for a person to practice dentistry in this State after the expiration date that appears on the license unless the practitioner pays to the board on or before January 1st of even-numbered years a fee of not more than $550 to be determined by the board, and meets other conditions that the board may require. Upon receipt of the required fee, the board shall issue a renewal of the practitioner's license, which the practitioner shall place beside or attach to the practitioner's initial license. Practitioners who have not paid as provided and who otherwise qualify for renewal may be reinstated upon payment of a fee to be determined by the board of not more than $200 if paid before February 1st. A license to practice is automatically suspended on February 1st for nonpayment of the license renewal fee and may be reinstated, if approved by the board, on payment of a fee to be determined by the board of not more than $550. A new applicant having paid the application fee shall pay either the biennial licensure fee, if the applicant applies in an even-numbered year, or half the biennial licensure fee if the applicant applies in an odd-numbered year. [2003, c. 669, §4 (AMD).]

The board may issue a limited biennial license to a dentist who has retired from the regular practice of dentistry for the purposes of permitting the dentist to practice solely in a nonprofit dental clinic without any remuneration for work performed at the clinic. The applicant must furnish proof satisfactory to the board that the applicant has been licensed to practice dentistry in this State and is in good standing with the board or, if the applicant was licensed to practice dentistry in another state or a Canadian province, that the applicant's professional education is no less than is required in this State and the applicant is in good standing and not subject to disciplinary action in the state or Canadian province in which the license was granted. The fee for a limited biennial license and renewal of a limited biennial license is $75. [2011, c. 450, §1 (NEW).]

SECTION HISTORY
1967, c. 544, §80 (NEW). 1975, c. 484, §6 (RPR). 1981, c. 440, §§6,7 (AMD). 1993, c. 600, §A66 (AMD). 2003, c. 285, §1 (AMD). 2003, c. 669, §4 (AMD). 2011, c. 450, §1 (AMD).

§1084-A. CONTINUING EDUCATION

As a condition of renewal of a license to practice, a dentist must provide evidence of having successfully completed 40 hours of continuing education during the 2 years prior to application for renewal. To meet this requirement, the education must relate to professional competency and relate to those aspects of the profession in which the practitioner is currently engaged. The board shall specify the desired content of

the program of continuing education, establish criteria for approving providers of continuing education and approve those providers. The board shall specify the criteria for successful completion of a continuing education requirement. All actions by the board in the implementation of this program must be by rule and follow the provisions of the Maine Administrative Procedure Act. [1993, c. 600, Pt. A, §67 (AMD).]

The board may indicate to an individual practitioner specific subject areas on which that practitioner's continuing education is to focus in the future. Providers are required to obtain and retain for 3 years a written course assessment from each student, which must be reviewed periodically by the board. [1993, c. 600, Pt. A, §67 (AMD).]

SECTION HISTORY
1989, c. 90, §2 (NEW). 1993, c. 600, §A67 (AMD).

§1084-B. MENTAL OR PHYSICAL EXAMINATION

For the purposes of this section, by application for and acceptance of a license to practice, a licensed dentist is considered to have given consent to a mental or physical examination when directed by the board. The board may direct a dentist to submit to an examination whenever the board determines the dentist may be suffering from a mental illness that may be interfering with the competent practice of dentistry or from the use of intoxicants or drugs to an extent that they are preventing the dentist from practicing dentistry competently and with safety to patients. A dentist examined pursuant to an order of the board may not prevent the testimony of the examining individual or prevent the acceptance into evidence of the report of an examining individual. Failure to comply with an order of the board to submit to a mental or physical examination results in the immediate suspension of the license of the dentist by order of the District Court until the dentist submits to the examination. [2003, c. 669, §5 (NEW).]

SECTION HISTORY
2003, c. 669, §5 (NEW).

§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 or a Canadian province after full compliance with the requirements of its dental laws. If an applicant is licensed to practice dentistry in another state or a Canadian province, that applicant's professional education may not be less than is required in this State and the applicant must have been at least 3 years in actual practice in the state or Canadian province 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. The personal interview may be waived at the board's discretion based upon proof of overseas military deployment; however, the applicant shall submit to an interview by telephone or the equivalent as determined by the board. 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 $550. [2005, c. 45, §2 (AMD).]

SECTION HISTORY
1967, c. 544, §80 (NEW). 1969, c. 197, §3 (AMD). 1981, c. 440, §8 (AMD). 1993, c. 600, §A68 (AMD). 1995, c. 590, §1 (AMD). 2001, c. 260, §B3 (AMD). 2003, c. 285, §2 (AMD). 2003, c. 557, §1 (AMD). 2003, c. 669, §6 (AMD). 2005, c. 45, §2 (AMD).

§1086. PERMITS FOR INTERNSHIP

The board has the authority, upon presentation of satisfactory credentials under the rules as the board may prescribe, to issue permits to a graduate of an approved dental school or college who has not been licensed to practice dentistry in this State, who has passed an examination for licensure in this State and who, in the board's judgment, has not violated a provision of this chapter or rules adopted by the board to serve as a dental intern in a licensed hospital, providing the hospital maintains a dental staff of at least one licensed dentist. Permits expire at the end of one month and may be renewed by the board. The intern functions under the supervision and direction of the dental staff of the hospital, and the intern's work is limited to patients admitted to the hospital. The intern is not eligible to receive a fee or compensation in addition to the salary or other remuneration received from the hospital. [1993, c. 600, Pt. A, §69 (AMD).]

A special permit may be issued by the board to a licensed dentist practicing outside this State when the request for the dentist comes from a charitable or social organization within the State and when the purpose for that permit is to provide free dental care for the public when resident dental service is not available. The board may provide an expiration date for a permit issued, except that a permit may not be valid for more than one year. [1993, c. 2, §33 (COR).]

The board has the authority, upon presentation of satisfactory proof of academic affiliation and good academic standing, and providing, in the board's judgment, a violation of a provision of this chapter or of the board's rules has not occurred, to issue a permit to a bona fide dental student of a school or university acceptable to the board, after the completion of satisfactory training to perform limited dental service in institutional and public health service programs within the State, commensurate with the student's level of training under the supervision and control of a licensed dentist or a teaching school. The board must, prior to the issuance of this permit, determine that the supervision and control of the services to be performed by the student are adequate and that the performance of these services by the student adds to the student's knowledge and skill in dentistry. Permits expire at the end of each month and may be renewed by the board. [1993, c. 2, §33 (COR).]

Specialists in particular fields of dentistry practicing outside the State may be issued a permit to practice within the State for a period not to exceed 6 months. [1993, c. 600, Pt. A, §69 (AMD).]

The board may charge a fee up to $50 for licenses issued pursuant to this section. [1993, c. 600, Pt. A, §69 (NEW).]

The board has the authority, upon the presentation of credentials and other information satisfactory to it, to issue a temporary permit for practice of dentistry in the State as part of a board-approved program of clinical education for Maine practitioners. An individual who is not currently licensed to practice dentistry in another state may not receive a temporary permit. An individual may not receive a temporary permit for more than 7 days in any calendar year. [1997, c. 107, §7 (NEW).]

The board has the authority, upon presentation of satisfactory credentials and fulfillment of other conditions set by rule adopted by the board, to issue a permit to a graduate of an approved dental school or college who has not been licensed to practice dentistry in this State, who has passed an examination for licensure in this State and who, in the board's judgment, has not violated a provision of this chapter or rules adopted by the board to serve as a dental resident in a board-approved dental setting within the State. The board must, prior to the issuance of a permit under this paragraph, determine that the supervision and control of the services to be performed by the dental resident are adequate and that the performance of these services by the dental resident are within the dental resident's dental knowledge and skill. The dental resident must function under the supervision and direction of a dentist licensed in this State. A permit under this paragraph may not be valid for more than one year. The board may charge a fee up to $50 for a permit. [2009, c. 464, §1 (NEW).]

SECTION HISTORY
1967, c. 544, §80 (NEW). 1969, c. 197, §4 (AMD). 1975, c. 484, §7 (AMD). 1977, c. 694, §560 (RPR). RR 1993, c. 2, §33 (COR). 1993, c. 600, §A69 (AMD). 1997, c. 107, §7 (AMD). 2009, c. 464, §1 (AMD).

§1086-A. DENTAL SCHOOL FACULTY LICENSE

1. **Dental school faculty license.** The board may issue a dental school faculty license to an applicant who teaches:

A. Dentistry, dental hygiene or denturism in this State as part of a clinical and didactic program for professional education for dental students and dental residents accredited by the American Dental Association Commission on Dental Accreditation or a successor organization approved by the board; [2011, c. 330, §1 (NEW).]

B. Dental hygiene in this State as part of a clinical and didactic program for professional education for dental hygiene students and dental hygiene residents accredited by the American Dental Association Commission on Dental Accreditation or a successor organization approved by the board; or [2011, c. 330, §1 (NEW).]

C. Denturism in this State as part of a board-approved clinical and didactic program for professional education for denturism students. [2011, c. 330, §1 (NEW).]

A dental school faculty license allows the licensee to practice only within the dental school setting, dental hygiene school setting or denturism school setting, including any satellite locations approved by the board.

[2011, c. 330, §1 (NEW) .]

2. **Eligibility.** To qualify for licensure under this section, an applicant must:

A. Hold a current dental, dental hygiene or denturism license in another state or a Canadian province and demonstrate, to the satisfaction of the board, full compliance with the requirements of that other jurisdiction's dental laws; and [2011, c. 330, §1 (NEW).]

B. Submit credentials, satisfactory to the board, including a recommendation letter from an employing school of dentistry, dental hygiene or denturism stating why the board should consider the applicant to be qualified under criteria established by rules adopted by the board. [2011, c. 330, §1 (NEW).]

[2011, c. 330, §1 (NEW) .]

3. **Fees.** The board may assess a fee of up to $250 for a dental school faculty license and renewal.

[2011, c. 330, §1 (NEW) .]

4. **Renewals.** All licenses under this section expire after 2 years on such date as the board may designate and are renewable by the board.

[2011, c. 330, §1 (NEW) .]

5. **Rules.** The board may adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2011, c. 330, §1 (NEW) .]

SECTION HISTORY
2011, c. 330, §1 (NEW).

§1087. FEE FOR DUPLICATE LICENSE

An applicant for a duplicate license granted upon proof of loss of the original shall pay a fee of no more than $50. [2003, c. 285, §3 (AMD).]

SECTION HISTORY

1967, c. 544, §80 (NEW). 1981, c. 440, §9 (AMD). 1993, c. 600, §A70 (AMD). 2003, c. 285, §3 (AMD).

§1088. LAWFUL PRACTITIONERS

(REPEALED)

SECTION HISTORY
1967, c. 544, §80 (NEW). 1983, c. 378, §12 (RP).

§1089. DRUGS AND DENTAL PROCEDURE

A dentist may prescribe drugs or medicines, perform surgical operations, administer local anesthetics and use appliances as may be necessary for proper dental treatment. A dentist may also, with the appropriate permit issued by the board, administer general anesthetics and conscious sedation. A dentist is authorized to take case histories and perform physical examinations to the extent the activities are necessary in the exercise of due care in conjunction with the provision of dental treatment or the administration of general or local anesthetics. A dentist is not permitted to perform physical examinations within a hospital licensed by the Department of Health and Human Services unless this activity is permitted by the hospital. [2005, c. 45, §3 (AMD).]

SECTION HISTORY
1967, c. 544, §80 (NEW). 1975, c. 293, §4 (AMD). 1975, c. 484, §8 (RPR). 1985, c. 748, §42 (AMD). 1993, c. 600, §A71 (AMD). 2003, c. 689, §B6 (REV). 2005, c. 45, §3 (AMD).

§1090. PRESCRIPTION REQUIRED FOR DENTAL LABORATORY

1. **Prescription.** A dentist who uses the services of a person not licensed to practice dentistry in this State to construct, alter, repair or duplicate a denture, plate, partial plate, bridge, splint, orthodontic or prosthetic appliance shall first furnish the unlicensed person with a written prescription, which must contain:

A. The name and address of the unlicensed person; [1993, c. 600, Pt. A, §72 (AMD).]

B. The patient's name or number. In the event the number is used, the name of the patient must be written upon the duplicate copy of the prescription retained by the dentist; [1993, c. 600, Pt. A, §72 (AMD).]

C. The date on which it was written; [1967, c. 544, §80 (NEW).]

D. A prescription of the work to be done, with diagrams if necessary; [1967, c. 544, §80 (NEW).]

E. A specification of the type and quality of materials to be used; and [1993, c. 600, Pt. A, §72 (AMD).]

F. The signature of the dentist and the number of the dentist's state license. [1993, c. 600, Pt. A, §72 (AMD).]

The unlicensed person shall retain the original prescription and the dentist shall retain for 2 years a duplicate copy for inspection by the board or its agent. For purposes of this subsection, "unlicensed person" includes all legal entities.

[1993, c. 600, Pt. A, §72 (AMD) .]

SECTION HISTORY
1967, c. 544, §80 (NEW). 1993, c. 600, §A72 (AMD).

§1091. REVOCATION OF LICENSE

(REPEALED)

SECTION HISTORY
1967, c. 544, §80 (NEW). 1973, c. 303, §3 (AMD). 1975, c. 484, §9 (AMD). 1977, c. 458, §§4,4A (AMD). 1983, c. 378, §13 (RP).

§1092. UNLAWFUL PRACTICE

1. **Unlawful practice.** A person may not:

A. Practice dentistry without obtaining a license; [2003, c. 452, Pt. R, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. Practice dentistry under a false or assumed name; [2003, c. 452, Pt. R, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

C. Practice dentistry under the license of another person of the same name; [2003, c. 452, Pt. R, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

D. Practice dentistry under the name of a corporation, company, association, parlor or trade name; [2003, c. 452, Pt. R, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

E. While manager, proprietor, operator or conductor of a place for performing dental operations, employ a person who is not a lawful practitioner of dentistry in this State to perform dental practices as described in section 1081; [2003, c. 452, Pt. R, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

F. While manager, proprietor, operator or conductor of a place for performing dental operations, permit a person to practice dentistry under a false name; [2003, c. 452, Pt. R, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

G. Assume a title or append or prefix to that person's name the letters that falsely represent the person as having a degree from a dental college; [2003, c. 452, Pt. R, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

H. Impersonate another at an examination held by the board; [2003, c. 452, Pt. R, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

I. Knowingly make a false application or false representation in connection with an examination held by the board; [2003, c. 452, Pt. R, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

J. Practice as a dental hygienist or independent practice dental hygienist without having a license to do so; [2011, c. 184, §4 (AMD).]

K. Employ a person as a dental hygienist or independent practice dental hygienist who is not licensed to practice; [2011, c. 184, §4 (AMD).]

L. Practice as a denturist without having a license to do so; [2011, c. 184, §4 (NEW).]

M. Practice as a dental radiographer without having a license to do so; [2011, c. 184, §4 (NEW).]

N. Employ a person as a denturist who is not licensed to practice; or [2011, c. 184, §4 (NEW).]

O. Employ a person as a dental radiographer who is not licensed to practice. [2011, c. 184, §4 (NEW).]

[2011, c. 184, §4 (AMD) .]

2. **Penalty.** A person who violates this section commits a Class E crime. Violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

[2003, c. 452, Pt. R, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY
1967, c. 544, §80 (NEW). 1975, c. 484, §10 (AMD). 1993, c. 600, §A73 (AMD). 2003, c. 452, §X2 (AFF). 2003, c. 452, §R1 (RPR). 2007, c. 620, Pt. C, §§7, 8 (AMD). 2011, c. 184, §4 (AMD).

§1092-A. CONFIDENTIALITY

1. **Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Confidential communication" means a communication not intended to be disclosed to 3rd persons other than those present to further the interest of the patient in the consultation, examination or interview or persons who are participating in the diagnosis and treatment under the direction of the dentist, including members of the patient's family. [1981, c. 211, §2 (NEW).]

B. "Patient" means a person who consults or is examined or interviewed by a dentist or dental auxiliary. [1981, c. 211, §2 (NEW).]

[1981, c. 211, §2 (NEW) .]

2. **General rule of privilege.** A patient has a privilege to refuse to disclose and to prevent another person from disclosing confidential communications made for the purpose of diagnosis or treatment of the patient's physical, mental or emotional conditions, including alcohol or drug addiction, among the patient, the patient's dentist and persons who are participating in the diagnosis or treatment under the direction of the dentist, including members of the patient's family.

[1993, c. 600, Pt. A, §74 (AMD) .]

3. **Who may claim the privilege.** The privilege may be claimed by the patient, by the patient's guardian or conservator or by the personal representative of a deceased patient. The dentist or dental auxiliary at the time of the communication is presumed to have authority to claim the privilege, but only on behalf of the patient.

[1993, c. 600, Pt. A, §74 (AMD) .]

4. **Exceptions.** Notwithstanding any other provisions of law, the following are exceptions.

A. If the court orders an examination of the physical, mental or emotional condition of a patient, whether a party or a witness, communications made in the course of the examination are not privileged under this section with respect to the particular purpose for which the examination is ordered unless the court orders otherwise. [1993, c. 600, Pt. A, §75 (AMD).]

B. There is not any privilege under this section as to communications relevant to an issue of the physical, mental or emotional condition of the patient in a proceeding in which the condition of the patient is an element of the claim or defense of the patient, or of a party claiming through or under the patient or because of the patient's condition or claiming as a beneficiary of the patient through a contract to which the patient is or was a party, or after the patient's death, in a proceeding in which a party puts the condition in issue. [1993, c. 600, Pt. A, §75 (AMD).]

C. There is not any privilege under this section as to information regarding a patient that is sought by the Chief Medical Examiner or the Chief Medical Examiner's designee in a medical examiner case, as defined by Title 22, section 3025, in which the Chief Medical Examiner or the Chief Medical Examiner's designee has reason to believe that information relating to dental treatment may assist in determining the identity of a deceased person. [1993, c. 600, Pt. A, §75 (AMD).]

D. There is not any privilege under this section as to disclosure of information concerning a patient when that disclosure is required by law and nothing in this section may modify or affect the provisions of Title 22, sections 4011-A to 4015 and Title 29-A, section 2405. [2001, c. 345, §8 (AMD).]

[2001, c. 345, §8 (AMD) .]

SECTION HISTORY
1981, c. 211, §2 (NEW). 1985, c. 296, §2 (AMD). 1993, c. 600, §§A74,75 (AMD). 1995, c. 65, §A131 (AMD). 1995, c. 65, §§A153,C15 (AFF). 2001, c. 345, §8 (AMD).

§1093. FRAUDULENT SALE OR ALTERATION OF DIPLOMAS OR LICENSES

1. **Fraudulent or altered diploma or license; bribery.** A person may not:

A. Sell or offer to sell a diploma conferring a dental degree or license granted pursuant to the laws of this State; [2003, c. 452, Pt. R, §2 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. Procure a license or diploma with intent that it be used as evidence of the right to practice dentistry by a person other than the one upon whom the diploma or license was conferred; [2003, c. 452, Pt. R, §2 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

C. With fraudulent intent alter a diploma or license to practice dentistry; [2003, c. 452, Pt. R, §2 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

D. Use or attempt to use an altered diploma or license; or [2003, c. 452, Pt. R, §2 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

E. Attempt to bribe a member of the board by the offer or use of money or other pecuniary reward or by other undue influence. [2003, c. 452, Pt. R, §2 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. R, §2 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

2. **Penalty.** A person who violates this section commits a Class E crime. Except as otherwise specifically provided, violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

[2003, c. 452, Pt. R, §2 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY
1967, c. 544, §80 (NEW). 1991, c. 797, §14 (AMD). 1993, c. 600, §A76 (AMD). 2003, c. 452, §X2 (AFF). 2003, c. 452, §R2 (RPR).

§1094. PENALTIES

A person who violates a provision of this chapter, for the violation of which a penalty has not been prescribed, commits a civil violation for which a forfeiture of not more than $1,000 may be adjudged. [2001, c. 421, Pt. B, §94 (AMD); 2001, c. 421, Pt. C, §1 (AFF).]

SECTION HISTORY

1967, c. 544, §80 (NEW). 1991, c. 797, §14 (AMD). 1993, c. 600, §A77 (AMD). 2001, c. 421, §B94 (AMD). 2001, c. 421, §C1 (AFF).

§1094-A. REVIEW COMMITTEE IMMUNITY

Any dentist who is a member of a peer review committee of a state or local association or society composed of doctors of dentistry, any staff member of such an association or society assisting a peer review committee and any witness or consultant appearing before or presenting information to the peer review committee is immune from civil liability for, without malice, undertaking or failing to undertake any act within the scope of the function of the committee. [1987, c. 646, §8 (RPR).]

SECTION HISTORY
1975, c. 484, §11 (NEW). 1987, c. 646, §8 (RPR).

§1094-B. REMOVABLE DENTAL PROSTHESES; OWNER IDENTIFICATION

1. **Identification required.** Every complete upper and lower denture and removable dental prosthesis fabricated by a dentist licensed under this chapter, or fabricated pursuant to the dentist's work order or under the dentist's direction or supervision, must be marked with the name and social security number of the patient for whom the prosthesis is intended. The markings must be done during fabrication and must be permanent, legible and cosmetically acceptable. The exact location of the markings and the methods used to apply or implant the markings must be determined by the dentist or dental laboratory fabricating the prosthesis. If, in the professional judgment of the dentist or dental laboratory, this identification is not practical, identification must be provided as follows:

A. The social security number of the patient may be omitted if the name of the patient is shown; [1983, c. 21, (NEW).]

B. The initials of the patient may be shown alone, if use of the name of the patient is impracticable; or [1983, c. 21, (NEW).]

C. The identification marks may be omitted in their entirety if none of the forms of identification specified in paragraphs A and B are practicable or clinically safe. [1983, c. 21, (NEW).]

[1993, c. 600, Pt. A, §78 (AMD) .]

2. **Dentures already in existence.** A removable dental prosthesis in existence prior to the effective date of this section that was not marked in accordance with subsection 1 at the time of its fabrication must be marked in accordance with subsection 1 at the time of a subsequent rebasing.

[1993, c. 600, Pt. A, §78 (AMD) .]

3. **Technical assistance.**

[1993, c. 600, Pt. A, §78 (RP) .]

4. **Violations.** Failure of a dentist to comply with this section is a violation for which the dentist is subject to proceedings pursuant to section 1077, provided that the dentist is charged with the violation within 2 years of initial insertion of the dental prosthetic device.

[1993, c. 600, Pt. A, §78 (AMD) .]

SECTION HISTORY
1983, c. 21, (NEW). 1985, c. 748, §42 (AMD). 1993, c. 600, §A78 (AMD).

§1094-C. BROCHURE AND POSTER

1. **Display.** Beginning July 1, 2002, a dentist who uses mercury or a mercury amalgam in any dental procedure shall display the poster adopted by the Department of Health and Human Services, Bureau of Health under this section in the public waiting area of that dentist's office and must provide each patient with a copy of the brochure adopted by the bureau under this section. The Department of Health and Human Services shall also post on its publicly accessible site on the Internet a copy of the brochure that is suitable for downloading and printing by dentists, patients and other interested parties.

[2001, c. 710, §17 (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

2. **Rules.** The Director of the Bureau of Health within the Department of Health and Human Services shall develop a brochure that explains the potential advantages and disadvantages to oral health, overall human health and the environment of using mercury or mercury amalgam in dental procedures. The brochure must describe what alternatives are available to mercury amalgam in various dental procedures and what potential advantages and disadvantages are posed by the use of those alternatives. The brochure may also include other information that contributes to the patient's ability to make an informed decision when choosing between the use of mercury amalgam or an alternative material in a dental procedure, including, but not limited to, information on the durability, cost, aesthetic quality or other characteristics of the mercury amalgam and alternative materials. The director shall also develop a poster that informs patients of the availability of the brochure.

The Director of the Bureau of Health shall, in consultation with the Department of Environmental Protection, adopt the brochure and the poster described in this subsection as major substantive rules pursuant to Title 5, chapter 375, subchapter II-A. The brochure and poster must be provisionally adopted and submitted to the Legislature for consideration during the Second Regular Session of the 120th Legislature.

[2001, c. 710, §17 (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

SECTION HISTORY
2001, c. 385, §1 (NEW). 2001, c. 710, §17 (AMD). 2003, c. 689, §B6 (REV).

Subchapter 3-A: EXPANDED FUNCTION DENTAL ASSISTANT HEADING: PL 2005, C. 322, §1 (NEW)

§1094-D. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, "expanded function dental assistant" means an individual who holds a current valid certification under this subchapter to perform reversible intraoral procedures authorized by this subchapter under the direct supervision of a licensed dentist and under an assignment of duties by a dentist. As used in this subchapter, unless the context otherwise indicates, "reversible intraoral procedures" means placing and removing rubber dams and matrices; placing and contouring amalgam, composite and other restorative materials; applying sealants; supra gingival polishing; and other reversible procedures defined by the board not designated by this chapter to be performed only by licensed dentists, dental hygienists or independent practice dental hygienists. [2007, c. 620, Pt. C, §9 (AMD).]

SECTION HISTORY
2005, c. 322, §1 (NEW). 2007, c. 620, Pt. C, §9 (AMD).

§1094-E. PROCEDURES NOT AUTHORIZED

An expanded function dental assistant may not perform the following procedures: [2005, c. 322, §1 (NEW).]

1. **Examination, diagnosis and treatment planning.** Complete or limited examination, diagnosis or treatment planning;

[2005, c. 322, §1 (NEW) .]

2. **Surgical or cutting procedures.** Surgical or cutting procedures of hard or soft tissue;

[2005, c. 322, §1 (NEW) .]

3. **Prescribing drugs.** Prescribing drugs, medicaments or work authorizations;

[2005, c. 322, §1 (NEW) .]

4. **Performing pulp capping.** Performing pulp capping, pulpotomy or other endodontic procedures;

[2005, c. 322, §1 (NEW) .]

5. **Placement and adjustment of prosthetic appliances.** Placement and intraoral adjustments of fixed or removable prosthetic appliances; or

[2005, c. 322, §1 (NEW) .]

6. **Administration of anesthesia or sedation.** Administration of local anesthesia, parenteral or inhalation sedation or general anesthesia.

[2005, c. 322, §1 (NEW) .]

SECTION HISTORY
2005, c. 322, §1 (NEW).

§1094-F. SUPERVISION

An expanded function dental assistant shall perform under the direct supervision of a dentist. As used in this section, "direct supervision" means that a dentist is in the dental office or treatment facility, personally diagnoses the condition to be treated, personally authorizes the condition to be treated and remains in the dental office or treatment facility while the procedure is being performed by the expanded function dental assistant and, before dismissal of the patient, evaluates the work performed by the expanded function dental assistant. [2005, c. 322, §1 (NEW).]

SECTION HISTORY
2005, c. 322, §1 (NEW).

§1094-G. QUALIFICATIONS

The board may certify as an expanded function dental assistant a person 18 years of age or older who submits an application on forms furnished by the board together with the required fee to be determined by the board, not to exceed $100, and: [2005, c. 322, §1 (NEW).]

1. **Holds certified dental assistant certificate or registered dental hygiene license and has completed training.** Holds a current certified dental assistant certification or a current registered dental hygienist license and has successfully completed training in a school or program approved by the board; or

[2005, c. 322, §1 (NEW) .]

2. **Is credentialed by another state or province.** Is credentialed to perform as an expanded function dental assistant by another state or Canadian province, the standards of which are acceptable to the board.

[2005, c. 322, §1 (NEW) .]

The board may adopt routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A to implement this section. [2005, c. 322, §1 (NEW).]

SECTION HISTORY
2005, c. 322, §1 (NEW).

§1094-H. CERTIFICATION; RENEWAL

Certificates must be renewed every 5 years. On or before the expiration of the certificate, the expanded function dental assistant must pay to the board a certification renewal fee of not more than $100 to be determined by the board. Expanded function dental assistants who have not paid the renewal fee on or before the expiration of the 5-year certificate must be reinstated upon payment of a late fee of not more than $50 to be determined by the board if paid within 30 days of the certificate's expiration date. Failure to be properly certified within 30 days results in automatic suspension of a certificate to practice. Reinstatement may be made, if approved by the board, by payment to the secretary-treasurer of the board of a fee determined by the board of not more than $100. [2005, c. 322, §1 (NEW).]

The board may adopt routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A to implement this section. [2005, c. 322, §1 (NEW).]

SECTION HISTORY
2005, c. 322, §1 (NEW).

Subchapter 3-B: INDEPENDENT PRACTICE DENTAL HYGIENISTS

§1094-I. INDEPENDENT PRACTICE

An independent practice dental hygienist licensed by the board pursuant to this subchapter may practice without supervision by a dentist to the extent permitted by this subchapter. Any licensee of the board may be the proprietor of a place where independent practice dental hygiene is performed and may purchase, own or lease equipment necessary for the performance of independent practice dental hygiene. [2007, c. 620, Pt. B, §1 (NEW).]

A person practicing independent practice dental hygiene as an employee of another shall cause that person's name to be conspicuously displayed at the entrance of the place where the practice is conducted. [2007, c. 620, Pt. B, §1 (NEW).]

SECTION HISTORY
2007, c. 620, Pt. B, §1 (NEW).

§1094-J. QUALIFICATIONS FOR LICENSURE

To qualify for licensure under this subchapter as an independent practice dental hygienist, a person must: [2007, c. 620, Pt. B, §1 (NEW).]

1. **Eighteen years of age.** Be 18 years of age or older;

[2007, c. 620, Pt. B, §1 (NEW) .]

2. **Licensure as dental hygienist.** Possess a valid license to practice dental hygiene issued by the board pursuant to subchapter 4 or qualify for licensure as an independent practice dental hygienist by endorsement pursuant to section 1094-L; and

[2007, c. 620, Pt. B, §1 (NEW) .]

3. **Education and experience.** Meet the educational and experience requirements described in section 1094-K.

[2007, c. 620, Pt. B, §1 (NEW) .]

SECTION HISTORY
2007, c. 620, Pt. B, §1 (NEW).

§1094-K. EDUCATION AND EXPERIENCE

An applicant for licensure under this subchapter as an independent practice dental hygienist must: [2007, c. 620, Pt. B, §1 (NEW).]

1. **Bachelor's degree and 2,000 hours experience.** Possess a bachelor's degree in dental hygiene from a dental hygiene program accredited by the American Dental Association Commission on Dental Accreditation, or its successor organization, and document 2,000 work hours of clinical practice in a private dental practice or nonprofit dental clinic under direct or general supervision of a dentist during the 4 years preceding application; or

[2009, c. 318, §1 (AMD) .]

2. **Associate degree and 5,000 hours experience.** Possess an associate degree in dental hygiene from a dental hygiene program accredited by the American Dental Association Commission on Dental Accreditation, or its successor organization, and document 5,000 work hours of clinical practice in a private dental practice or nonprofit dental clinic under direct or general supervision of a dentist during the 6 years preceding application.

[2009, c. 318, §1 (AMD) .]

SECTION HISTORY
2007, c. 620, Pt. B, §1 (NEW). 2009, c. 318, §1 (AMD).

§1094-L. LICENSURE BY ENDORSEMENT

A person eligible for licensure as a dental hygienist by endorsement pursuant to section 1098-D, subsection 2 or 1099 is also eligible for licensure under this subchapter as an independent practice dental hygienist by endorsement if the applicant meets the education and experience requirements set forth in section 1094-K. [2007, c. 620, Pt. B, §1 (NEW).]

SECTION HISTORY
2007, c. 620, Pt. B, §1 (NEW).

§1094-M. APPLICATION

An applicant for licensure as an independent practice dental hygienist shall apply to the board on forms provided by the board. The applicant shall include as part of the application such information and documentation as the board may require to act on the application. The application must be accompanied by the application fee set under section 1094-O. [2007, c. 620, Pt. B, §1 (NEW).]

SECTION HISTORY
2007, c. 620, Pt. B, §1 (NEW).

§1094-N. LICENSE; BIENNIAL RENEWAL; DISCONTINUATION OF DENTAL HYGIENIST LICENSE

The board shall issue a license to practice as an independent practice dental hygienist to a person who has met the requirements for licensure set forth in this subchapter and has paid the application fee under section 1094-O. There is an initial license fee only for independent practice dental hygienists licensed by endorsement. The license must be exhibited publicly at the person's place of business or employment. The initial date of expiration of the license is the original expiration date of the person's dental hygienist license issued by the board pursuant to subchapter 4 or, for independent practice dental hygienists licensed by endorsement, January 1st of the first odd-numbered year following initial licensure. On or before January 1st of each odd-numbered year, the independent practice dental hygienist shall pay to the board a license renewal fee. Independent practice dental hygienists who have not paid the renewal fee on or before January 1st must be reinstated upon payment of a late fee before February 1st of the year in which license renewal is due. Failure to be properly licensed by February 1st results in automatic suspension of a license to practice as an independent practice dental hygienist. Reinstatement of the independent practice dental hygienist license may be made, if approved by the board, by payment of a reinstatement fee to the board. [2007, c. 620, Pt. B, §1 (NEW).]

A dental hygienist license issued by the board pursuant to subchapter 4 of this chapter automatically expires upon issuance under this subchapter of an independent practice dental hygienist license to the same person. [2007, c. 620, Pt. B, §1 (NEW).]

SECTION HISTORY
2007, c. 620, Pt. B, §1 (NEW).

§1094-O. FEES

The board may establish by rule fees for purposes authorized under this subchapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for any one purpose may not exceed $275. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2007, c. 620, Pt. B, §1 (NEW).]

SECTION HISTORY
2007, c. 620, Pt. B, §1 (NEW).

§1094-P. CONTINUING EDUCATION

As a condition of renewal under this subchapter of a license to practice, an independent practice dental hygienist must submit evidence of successful completion of 30 hours of continuing education consisting of board-approved courses in the 2 years preceding the application for renewal. The board and the independent practice dental hygienist shall follow and are bound by the provisions of section 1084-A in the implementation of this section. [2007, c. 620, Pt. B, §1 (NEW).]

Continuing education completed pursuant to section 1098-B may be recognized for purposes of this section in connection with the first renewal of an independent practice dental hygienist license. [2007, c. 620, Pt. B, §1 (NEW).]

The board may refuse to issue a license under this subchapter to a person who has not completed continuing education required by section 1098-B or may issue the license on terms and conditions set by the board. [2007, c. 620, Pt. B, §1 (NEW).]

SECTION HISTORY
2007, c. 620, Pt. B, §1 (NEW).

§1094-Q. SCOPE OF PRACTICE

1. **Independent practice.** An independent practice dental hygienist licensed under this subchapter may perform only the following duties without supervision by a dentist:

A. Interview patients and record complete medical and dental histories; [2007, c. 620, Pt. B, §1 (NEW).]

B. Take and record the vital signs of blood pressure, pulse and temperature; [2007, c. 620, Pt. B, §1 (NEW).]

C. Perform oral inspections, recording all conditions that should be called to the attention of a dentist; [2007, c. 620, Pt. B, §1 (NEW).]

D. Perform complete periodontal and dental restorative charting; [2007, c. 620, Pt. B, §1 (NEW).]

E. Perform all procedures necessary for a complete prophylaxis, including root planing; [2007, c. 620, Pt. B, §1 (NEW).]

F. Apply fluoride to control caries; [2007, c. 620, Pt. B, §1 (NEW).]

G. Apply desensitizing agents to teeth; [2007, c. 620, Pt. B, §1 (NEW).]

H. Apply topical anesthetics; [2007, c. 620, Pt. B, §1 (NEW).]

I. Apply sealants; [2007, c. 620, Pt. B, §1 (NEW).]

J. Smooth and polish amalgam restorations, limited to slow speed application only; [2007, c. 620, Pt. B, §1 (NEW).]

K. Cement pontics and facings outside the mouth; [2007, c. 620, Pt. B, §1 (NEW).]

L. Take impressions for athletic mouth guards and custom fluoride trays; [2007, c. 620, Pt. B, §1 (NEW).]

M. Place and remove rubber dams; [2007, c. 620, Pt. B, §1 (NEW).]

N. Place temporary restorations in compliance with the protocol adopted by the board; and [2007, c. 620, Pt. B, §1 (NEW).]

O. Apply topical antimicrobials, excluding antibiotics, including fluoride, for the purposes of bacterial reduction, caries control and desensitization in the oral cavity. The independent practice dental hygienist shall follow current manufacturer's instructions in the use of these medicaments. [2007, c. 620, Pt. B, §1 (NEW).]

For the purposes of this subsection, "topical" includes superficial and intraoral application.

[2007, c. 620, Pt. B, §1 (NEW) .]

2. **Practice under supervision.** An independent practice dental hygienist licensed under this subchapter may perform duties under the supervision of a dentist as set forth in the rules of the board pursuant to section 1095.

[2007, c. 620, Pt. B, §1 (NEW) .]

SECTION HISTORY
2007, c. 620, Pt. B, §1 (NEW).

§1094-R. RESPONSIBILITIES

An independent practice dental hygienist licensed under this subchapter has the duties and responsibilities set out in this section with respect to each patient seen in an independent capacity pursuant to section 1094-Q, subsection 1. [2007, c. 620, Pt. B, §1 (NEW).]

1. **Acknowledgment.** Prior to an initial patient visit, an independent practice dental hygienist licensed under this subchapter shall obtain from the patient or the parent or guardian of a minor patient written acknowledgment of the patient's or parent's or guardian's understanding that the independent practice dental hygienist is not a dentist and that the service to be rendered does not constitute restorative care or treatment.

[2007, c. 620, Pt. B, §1 (NEW) .]

2. **Referral plan.** An independent practice dental hygienist licensed under this subchapter shall provide to a patient or the parent or guardian of a minor patient a written plan for referral to a dentist for any necessary dental care. The referral plan must identify all conditions that should be called to the attention of the dentist.

[2007, c. 620, Pt. B, §1 (NEW) .]

SECTION HISTORY
2007, c. 620, Pt. B, §1 (NEW).

§1094-S. MENTAL OR PHYSICAL EXAMINATION

For the purposes of this section, by application for and acceptance of a license to practice under this subchapter, an independent practice dental hygienist is considered to have given consent to a mental or physical examination when directed by the board. The board may direct an independent practice dental hygienist to submit to an examination whenever the board determines the independent practice dental hygienist may be suffering from a mental illness that may be interfering with the competent independent practice of dental hygiene or from the use of intoxicants or drugs to an extent that they are preventing the independent practice dental hygienist from practicing dental hygiene competently and with safety to patients. An independent practice dental hygienist examined pursuant to an order of the board may not prevent the testimony of the examining individual or prevent the acceptance into evidence of the report of an examining individual. Failure to comply with an order of the board to submit to a mental or physical examination results in the immediate suspension of the license to practice independent dental hygiene by order of the District Court until the independent practice dental hygienist submits to the examination. [2007, c. 620, Pt. B, §1 (NEW).]

SECTION HISTORY
2007, c. 620, Pt. B, §1 (NEW).

§1094-T. USE OF FORMER EMPLOYERS' LISTS

An independent practice dental hygienist may not use or attempt to use in any manner whatsoever any prophylactic lists, call lists, records, reprints or copies of those lists, records or reprints, or information gathered from these materials, of the names of patients whom the independent practice dental hygienist might have served in the office of a prior employer, unless these names appear on the bona fide call or prophylactic list of the present employer and were caused to so appear through the independent practice of dentistry, denturism or independent practice dental hygiene as provided for in this chapter. A dentist, denturist or independent practice dental hygienist who employs an independent practice dental hygienist may not aid or abet or encourage an independent practice dental hygienist employed by such person to make use of a so-called prophylactic call list, or to call by telephone or to use written letters transmitted through the mails to solicit patronage from patients formerly served in the office of a dentist, denturist or independent practice dental hygienist that formerly employed the independent practice dental hygienist. [2007, c. 620, Pt. B, §1 (NEW).]

SECTION HISTORY
2007, c. 620, Pt. B, §1 (NEW).

Subchapter 3-C: DENTAL HYGIENE THERAPIST

§1094-AA. DENTAL HYGIENE THERAPIST

A dental hygienist or independent practice dental hygienist licensed by the board pursuant to this chapter may practice as a licensed dental hygiene therapist to the extent permitted by this subchapter. To qualify for licensure under this subchapter as a dental hygiene therapist, a person shall apply to the board on forms provided by the board, pay the application fee under section 1094-DD and demonstrate to the board that the applicant: [2013, c. 575, §7 (NEW).]

1. **Licensure.** Possesses a valid license to practice dental hygiene or independent practice dental hygiene pursuant to this chapter or qualifies for licensure to practice by endorsement pursuant to section 1094-L;

[2013, c. 575, §7 (NEW) .]

2. **Educational program standards and requirements.** Has successfully completed a dental hygiene therapy education program that:

A. Is accredited by the American Dental Association Commission on Dental Accreditation or a successor organization; [2013, c. 575, §7 (NEW).]

B. Is a minimum of 4 semesters; [2013, c. 575, §7 (NEW).]

C. Is consistent with the model curriculum for educating dental hygiene therapists adopted by the American Association of Public Health Dentistry, or a successor organization, is consistent with existing dental hygiene therapy programs in other states and is approved by the board; and [2013, c. 575, §7 (NEW).]

D. Meets the requirements for dental hygiene therapy education programs adopted by the board; [2013, c. 575, §7 (NEW).]

[2013, c. 575, §7 (NEW) .]

3. **Bachelor of Science degree.** Has been awarded a Bachelor of Science degree in dental hygiene. In order to meet the requirements of this subsection, an applicant must hold at least an associate degree in dental hygiene before entering a dental hygiene therapy education program that meets the requirements of subsection 2, which may be completed concurrently or consecutively with a Bachelor of Science degree in dental hygiene;

[2013, c. 575, §7 (NEW) .]

4. **Examination.** Has passed a comprehensive, competency-based clinical examination approved by the board and administered independently of an institution providing dental hygiene therapy education and has passed an examination of the applicant's knowledge of Maine laws and rules relating to the practice of dentistry. An applicant who fails the clinical examination twice may not take the clinical examination again until further education and training, as specified by the board, are obtained; and

[2013, c. 575, §7 (NEW) .]

5. **Supervised clinical practice.** Has completed 2,000 hours of supervised clinical practice under the supervision of a dentist licensed under this chapter and in conformity with rules adopted by the board, during which supervised clinical practice the applicant holds a provisional dental hygiene therapy license pursuant to section 1094-BB. For purposes of meeting the requirements of this subsection, an applicant's hours of supervised clinical experience while enrolled in the 4-semester dental training therapy program may be included.

[2013, c. 575, §7 (NEW) .]

SECTION HISTORY
2013, c. 575, §7 (NEW).

§1094-BB. PROVISIONAL DENTAL HYGIENE THERAPY LICENSE

The board shall issue a provisional dental hygiene therapy license to an applicant for licensure under this subchapter who has met the requirements of section 1094-AA, subsections 1 to 4 and rules adopted by the board and who has paid a fee established by the board of not more than $175. During the period of provisional licensure, which may not exceed 3 years, the applicant shall maintain in good standing the applicant's license to practice as a dental hygienist or an independent practice dental hygienist. During the period of provisional licensure the applicant may be compensated for services performed as a dental hygiene therapist. [2013, c. 575, §7 (NEW).]

SECTION HISTORY
2013, c. 575, §7 (NEW).

§1094-CC. DENTAL COVERAGE AND REIMBURSEMENT

Notwithstanding the requirements of Title 24-A, section 2752, any service performed by a dentist, dental assistant or dental hygienist licensed in this State that is reimbursed by private insurance, a dental service corporation, the MaineCare program under Title 22 or the Cub Care program under Title 22, section 3174-T must also be covered and reimbursed when performed by a dental hygiene therapist authorized to practice under this subchapter. [2013, c. 575, §7 (NEW).]

SECTION HISTORY
2013, c. 575, §7 (NEW).

§1094-DD. LICENSE; FEES; DISCONTINUATION OF LICENSE

The board shall issue a license to practice as a dental hygiene therapist to an applicant for licensure under this subchapter who has met the requirements of this subchapter and rules adopted pursuant to the subchapter for licensure and has paid the application fee of not more than $175. A dental hygiene therapist shall publicly exhibit the license at the therapist's place of business or employment. The initial date of expiration of the license must be the original expiration date of the dental hygiene therapist's dental hygienist license issued by the board pursuant to subchapter 4 or, for an independent practice dental hygienist licensed by endorsement, January 1st of the first odd-numbered year following initial licensure. On or before January 1st of each odd-numbered year, a dental hygiene therapist shall pay to the board a license renewal fee. The board may renew the license of a dental hygiene therapist who meets the requirements for continued licensure

and pays a renewal fee and a late fee by February 1st in the year in which renewal is due. The board shall suspend the license of a dental hygiene therapist who does not renew a license by February 1st in the year that renewal is due. The board may renew the license of a dental hygiene therapist who pays a renewal fee and a reinstatement fee as required by the board. [2013, c. 575, §7 (NEW).]

SECTION HISTORY
2013, c. 575, §7 (NEW).

§1094-EE. CONTINUING EDUCATION

As a condition of renewal of a license to practice under this subchapter, a dental hygiene therapist shall submit evidence of successful completion of 35 hours of continuing education in the 2 years prior to renewal. Continuing education under this section must be in conformity with the provisions of section 1084-A and must include board-approved courses, including but not limited to a course in cardiopulmonary resuscitation. The board may refuse renewal to an applicant who has not satisfied the requirements of this section or may renew a license on terms and conditions set by the board. [2013, c. 575, §7 (NEW).]

SECTION HISTORY
2013, c. 575, §7 (NEW).

§1094-FF. LIMITATION OF PRACTICE

Upon completion of 2,000 hours of supervised clinical practice under section 1094-AA, subsection 4 a dental hygiene therapist may provide services within the scope of practice provided in section 1094-HH and under the direct supervision of a dentist who is licensed in this State in the following health settings: a hospital; a public school, as defined in Title 20-A, section 1, subsection 24; a nursing facility licensed under Title 22, chapter 405; a residential care facility licensed under Title 22, chapter 1663; a clinic; a health center reimbursed as a federally qualified health center as defined in 42 United States Code, Section 1395x(aa)(4) (1993) or that has been determined by the federal Department of Health and Human Services, Centers for Medicare and Medicaid Services to meet the requirements for funding under Section 330 of the Public Health Service Act, 42 United States Code, Section 254(b); a federally qualified health center licensed in this State; a public health setting that serves underserved populations as recognized by the federal Department of Health and Human Services; or a private dental practice in which at least 50% of the patients who are provided services by that dental hygiene therapist are covered by the MaineCare program under Title 22 or are underserved adults. [2013, c. 575, §7 (NEW).]

SECTION HISTORY
2013, c. 575, §7 (NEW).

§1094-GG. WRITTEN PRACTICE AGREEMENT; STANDING ORDERS

A dental hygiene therapist may practice only under the direct supervision of a dentist who is licensed in this State, referred to in this subchapter as "the supervising dentist," and through a written practice agreement signed by both parties. For the purposes of this section, a written practice agreement is a signed document that, in conformity with the legal scope of practice provided in section 1094-HH, outlines the functions that the dental hygiene therapist is authorized to perform. A dental hygiene therapist may practice only under the standing order of a dentist, may provide only care that follows written protocols and may provide only services that the dental hygiene therapist is authorized to provide by that dentist. [2013, c. 575, §7 (NEW).]

1. **Minimum written practice agreement requirements.** A written practice agreement between a supervising dentist and a dental hygiene therapist must include the following elements:

A. The services and procedures and the practice settings for those services and procedures that the dental hygiene therapist may provide, together with any limitations on those services and procedures; [2013, c. 575, §7 (NEW).]

B. Any age-specific and procedure-specific practice protocols, including case selection criteria, assessment guidelines and imaging frequency; [2013, c. 575, §7 (NEW).]

C. Procedures to be used with patients treated by the dental hygiene therapist for obtaining informed consent and for creating and maintaining dental records; [2013, c. 575, §7 (NEW).]

D. A plan for review of patient records by the supervising dentist and the dental hygiene therapist; [2013, c. 575, §7 (NEW).]

E. A plan for managing medical emergencies in each practice setting in which the dental hygiene therapist provides care; [2013, c. 575, §7 (NEW).]

F. A quality assurance plan for monitoring care, including patient care review, referral follow-up and a quality assurance chart review; [2013, c. 575, §7 (NEW).]

G. Protocols for administering and dispensing medications, including the specific circumstances under which medications may be administered and dispensed; [2013, c. 575, §7 (NEW).]

H. Criteria for providing care to patients with specific medical conditions or complex medical histories, including requirements for consultation prior to initiating care; and [2013, c. 575, §7 (NEW).]

I. Specific written protocols, including a plan for providing clinical resources and referrals, governing situations in which the patient requires treatment that exceeds the scope of practice or capabilities of the dental hygiene therapist. [2013, c. 575, §7 (NEW).]

[2013, c. 575, §7 (NEW) .]

2. **Responsibility.** The supervising dentist shall accept responsibility for all authorized services and procedures performed by the dental hygiene therapist pursuant to the written agreement. A dental hygiene therapist who provides services or procedures beyond those authorized in the written agreement engages in unprofessional conduct for the purposes of this chapter.

[2013, c. 575, §7 (NEW) .]

3. **Revision.** Revisions to the written practice agreement must be documented in a new written practice agreement signed by the supervising dentist and the dental hygiene therapist.

[2013, c. 575, §7 (NEW) .]

4. **Requirements.** A supervising dentist and a dental hygiene therapist who sign a written practice agreement shall each file a copy of the agreement with the board, keep a copy for the dentist's or dental hygiene therapist's own records and make a copy available to patients of the dental hygiene therapist upon request. The copy of the written practice agreement in the records of the board must be made available to the public upon request.

[2013, c. 575, §7 (NEW) .]

SECTION HISTORY
2013, c. 575, §7 (NEW).

§1094-HH. SCOPE OF PRACTICE

A dental hygiene therapist may provide the care and services listed in this section and may provide them only under the direct supervision of a dentist licensed in this State. A dental hygiene therapist practicing under general supervision of a dentist may perform all duties of a dental hygiene therapist listed in rules adopted by the board. A dental hygiene therapist who is licensed as a dental hygienist may perform all of the duties of a dental hygienist under this chapter. A dental hygiene therapist who is licensed as an independent practice dental hygienist may perform all of the duties of an independent practice dental hygienist. A dental hygiene therapist may: [2013, c. 575, §7 (NEW).]

1. **Assessments and treatments; preparations; restorations.** Perform oral health assessments, pulpal disease assessments for primary and young teeth, simple cavity preparations and restorations and simple extractions;

[2013, c. 575, §7 (NEW) .]

2. **Crowns; space maintainers.** Prepare and place stainless steel crowns and aesthetic anterior crowns for primary incisors and prepare, place and remove space maintainers;

[2013, c. 575, §7 (NEW) .]

3. **Referrals.** Provide referrals;

[2013, c. 575, §7 (NEW) .]

4. **Anesthesia.** Administer local anesthesia and nitrous oxide analgesia;

[2013, c. 575, §7 (NEW) .]

5. **Preventive services.** Perform preventive services;

[2013, c. 575, §7 (NEW) .]

6. **Management of dental trauma and suturing; extractions.** Conduct urgent management of dental trauma, perform suturing and extract primary teeth and perform nonsurgical extractions of periodontally diseased permanent teeth if authorized in advance by the supervising dentist;

[2013, c. 575, §7 (NEW) .]

7. **Medications.** Provide, dispense and administer, within the parameters of the written practice agreement entered into under section 1094-GG and with the authorization of the supervising dentist, anti-inflammatories, nonprescription analgesics, antimicrobials, antibiotics and anticaries materials;

[2013, c. 575, §7 (NEW) .]

8. **Radiographs.** Administer radiographs; and

[2013, c. 575, §7 (NEW) .]

9. **Other related services and functions.** Perform other related services and functions authorized by the supervising dentist and for which the dental hygiene therapist is trained.

[2013, c. 575, §7 (NEW) .]

SECTION HISTORY
2013, c. 575, §7 (NEW).

§1094-II. SUPERVISION OF DENTAL HYGIENISTS AND DENTAL ASSISTANTS

A dental hygiene therapist may supervise dental assistants and dental hygienists to the extent permitted in the written practice agreement entered into under section 1094-GG. A dental hygiene therapist may not supervise more than 3 dental assistants and 2 dental hygienists in any one practice setting. [2013, c. 575, §7 (NEW).]

SECTION HISTORY
2013, c. 575, §7 (NEW).

§1094-JJ. REFERRALS

A supervising dentist shall arrange for another dentist or specialist to provide any services needed by a patient of a dental hygiene therapist supervised by that dentist that are beyond the scope of practice of the dental hygiene therapist and that the supervising dentist is unable to provide. A dental hygiene therapist, in accordance with a written practice agreement entered into under section 1094-GG, shall refer patients to another qualified dental or health care professional to receive needed services that exceed the scope of practice of the dental hygiene therapist. [2013, c. 575, §7 (NEW).]

SECTION HISTORY
2013, c. 575, §7 (NEW).

§1094-KK. RULEMAKING

The board shall adopt rules to implement this subchapter. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2013, c. 575, §7 (NEW).]

SECTION HISTORY
2013, c. 575, §7 (NEW).

Subchapter 4: DENTAL HYGIENISTS

§1095. DEFINITION

The dental hygienist who practices under the supervision of a dentist of record may perform duties as defined and set forth in the rules of the Board of Dental Examiners, except that nothing in this subchapter may be construed to affect the practice of medicine or dentistry or to prevent students of a dental college, university or school of dental hygiene from practicing dental hygiene under the supervision of their instructors. [1993, c. 600, Pt. A, §79 (AMD).]

SECTION HISTORY
1967, c. 544, §80 (NEW). 1971, c. 159, §3 (RPR). 1981, c. 440, §10 (AMD). 1993, c. 600, §A79 (AMD).

§1096. QUALIFICATIONS

A person 18 years old or over who has successfully completed 2 years' training in a school of dental hygiene approved by the board, or who is a full-time dental student who has satisfactorily completed at least half of the prescribed course of study in an accredited dental college, but who has not graduated from a dental college, is eligible to apply for examination. [1993, c. 600, Pt. A, §80 (AMD).]

SECTION HISTORY
1967, c. 544, §80 (NEW). 1969, c. 197, §5 (RPR). 1975, c. 484, §12 (RPR). 1983, c. 378, §14 (AMD). 1993, c. 600, §A80 (AMD).

§1097. APPLICATION; FEE

An eligible person desiring to practice dental hygiene must make written application to the Board of Dental Examiners to take the examination. The application must be accompanied by a fee to be determined by the board not to exceed $175. Applicants for licensure must pay a fee set by the board for the examination. The board may recognize a nationally or regionally administered examination for applicants to practice dental hygiene in the State. [2003, c. 669, §7 (AMD).]

SECTION HISTORY
1967, c. 544, §80 (NEW). 1981, c. 440, §11 (AMD). 1993, c. 600, §A81 (AMD). 2003, c. 669, §7 (AMD).

§1098. LICENSE; BIENNIAL FEE

The board shall issue a license to practice as a dental hygienist in this State to an individual who has met the licensure requirements. The license must be exhibited publicly at the person's place of employment. The license authorizes practice as a dental hygienist in this State for the year in which it is issued until the expiration date that appears on the license. On or before January 1st of each odd-numbered year, the dental hygienist must pay to the board a license renewal fee of not more than $175 to be determined by the board. Dental hygienists who have not paid the renewal fee on or before January 1st must be reinstated upon payment of a late fee of not more than $50 to be determined by the board if paid before February 1st of the year in which license renewal is due. Failure to be properly licensed by February 1st results in automatic suspension of a license to practice dental hygiene. Reinstatement may be made, if approved by the board, by payment to the secretary-treasurer of the board of a fee determined by the board of not more than $175. A new applicant who has paid the application fee shall pay the biennial licensure fee if the applicant applies in an odd-numbered year or half the biennial licensure fee if the applicant applies in an even-numbered year. [2005, c. 45, §4 (AMD).]

The board may issue temporary licenses to dental hygienists who present credentials satisfactory to the board. The board may charge a fee of up to $25 for a temporary license. [1993, c. 600, Pt. A, §82 (NEW).]

SECTION HISTORY
1967, c. 544, §80 (NEW). 1975, c. 484, §13 (AMD). 1981, c. 440, §12 (AMD). 1993, c. 600, §A82 (AMD). 2003, c. 669, §8 (AMD). 2005, c. 45, §4 (AMD).

§1098-A. FEE FOR DUPLICATE LICENSE

An applicant for a duplicate license granted upon proof of loss of the original shall pay a fee of $15. [1993, c. 600, Pt. A, §83 (AMD).]

SECTION HISTORY
1981, c. 440, §13 (NEW). 1993, c. 600, §A83 (AMD).

§1098-B. CONTINUING EDUCATION

As a condition of renewal of a license to practice, a dental hygienist must submit evidence of successful completion of 30 hours of continuing education consisting of board-approved courses in the 2 years preceding the application for renewal. The board and the dental hygienist shall follow and are bound by the provisions of section 1084-A in the implementation of this section. [2003, c. 669, §9 (AMD).]

SECTION HISTORY
1989, c. 90, §3 (NEW). 1993, c. 600, §A84 (AMD). 2003, c. 669, §9 (AMD).

§1098-C. MENTAL OR PHYSICAL EXAMINATION

For the purposes of this section, by application for and acceptance of a license to practice, a licensed dental hygienist is considered to have given consent to a mental or physical examination when directed by the board. The board may direct a dental hygienist to submit to an examination whenever the board determines the dental hygienist may be suffering from a mental illness that may be interfering with the competent practice of dental hygiene or from the use of intoxicants or drugs to an extent that they are preventing the dental hygienist from practicing dental hygiene competently and with safety to patients. A dental hygienist examined pursuant to an order of the board may not prevent the testimony of the examining individual or prevent the acceptance into evidence of the report of an examining individual. Failure to comply with an order of the board to submit to a mental or physical examination results in the immediate suspension of the license of the dental hygienist by order of the District Court until the dental hygienist submits to the examination. [2003, c. 669, §10 (NEW).]

SECTION HISTORY
2003, c. 669, §10 (NEW).

§1098-D. LICENSURE REQUIREMENTS FOR GRADUATES OF ACCREDITED PROGRAMS

In order to be licensed as a dental hygienist under this chapter, a person who is a graduate of a dental hygiene program approved by the American Dental Association Commission on Dental Accreditation or its successor organization must meet one of the following 2 sets of requirements: [2003, c. 669, §10 (NEW).]

1. **Standard licensure.** For standard licensure, the applicant must:

A. Have received, at least, an associate degree from a dental hygiene program accredited by the American Dental Association Commission on Dental Accreditation or its successor organization and have provided a notarized statement from the dean of the school affirming that the applicant has met all applicable degree requirements; [2003, c. 669, §10 (NEW).]

B. Have completed with a passing grade the National Board Dental Hygiene Examination or the successor to that examination; [2003, c. 669, §10 (NEW).]

C. Have completed with a passing grade the Northeast Regional Board Dental Hygiene Examination or the successor to that examination; [2003, c. 669, §10 (NEW).]

D. Have completed with a passing grade the jurisprudence examination given by the board; and [2003, c. 669, §10 (NEW).]

E. For any applicant who has completed the Northeast Regional Board Dental Hygiene Examination or the successor to that examination more than one year prior to application for licensure in the State, have successfully completed a personal interview before the board; or [2003, c. 669, §10 (NEW).]

[2003, c. 669, §10 (NEW) .]

2. **Licensure by endorsement.** For licensure by endorsement, the applicant must:

A. Have graduated from an accredited dental hygiene program; [2003, c. 669, §10 (NEW).]

B. If the candidate graduated subsequent to 1964, have completed with a passing grade the National Board Dental Hygiene Examination, or the successor to that examination, if such examination was required; [2003, c. 669, §10 (NEW).]

C. Have furnished proof, satisfactory to the board, that the candidate has been duly licensed to practice dental hygiene in another state after full compliance with its laws; [2003, c. 669, §10 (NEW).]

D. If the candidate graduated subsequent to 1970, have completed with a passing grade the Northeast Regional Board Dental Hygiene Examination, or the successor to that examination, if such examination was required, except that the board may at its discretion waive the Northeast Regional Board Dental Hygiene Examination, or the successor to that examination, if all other requirements of this subsection have been met; [2003, c. 669, §10 (NEW).]

E. Have engaged in active clinical practice for a minimum of 3 years prior to application; [2005, c. 289, §2 (AMD).]

F. Have completed with a passing grade the jurisprudence examination given by the board; and [2003, c. 669, §10 (NEW).]

G. Have successfully completed a personal interview before the board. [2003, c. 669, §10 (NEW).]

The board may at its discretion waive the Northeast Regional Board Dental Examination, or the successor to that examination, if all other requirements have been met.

[2005, c. 289, §2 (AMD) .]

SECTION HISTORY
2003, c. 669, §10 (NEW). 2005, c. 289, §2 (AMD).

§1098-E. TEMPORARY FILLING PROCEDURES

A dental hygienist with public health supervision status, as defined by rules adopted by the Board of Dental Examiners, may perform temporary filling procedures without a dentist present under protocols developed by the Board of Dental Examiners. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2005, c. 198, §1 (NEW).]

SECTION HISTORY
2005, c. 198, §1 (NEW).

§1099. ENDORSEMENT

The board may at its discretion, without examination, issue a license to an applicant to practice dental hygiene who furnishes proof satisfactory to the board that the dental hygienist has been duly licensed for at least 3 years to practice in another state or a Canadian province after full compliance with the requirements of its dental laws, except that the professional education may not be less than is required in this State. The board may require letters of reference as to ability. Applicants for licensure by endorsement who meet the requirements of this section must be interviewed in person by the Subcommittee on Dental Hygienists, as established in section 1079 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 that license must be determined by the board, but may not be more than $175. [2007, c. 620, Pt. A, §3 (AMD).]

SECTION HISTORY
1967, c. 544, §80 (NEW). 1981, c. 440, §14 (AMD). 1983, c. 378, §15 (AMD). 1993, c. 600, §A85 (AMD). 1995, c. 590, §2 (AMD). 2003, c. 557, §2 (AMD). 2003, c. 669, §11 (AMD). 2005, c. 289, §3 (AMD). 2007, c. 620, Pt. A, §3 (AMD).

§1100. USE OF FORMER EMPLOYERS' LISTS; SCOPE OF DUTIES

A dental hygienist may not use or attempt to use in any manner whatsoever any prophylactic lists, call lists, records, reprints or copies of those lists, records or reprints, or information gathered from these materials, of the names of patients whom the hygienist might have served in the office of a prior employer, unless these names appear on the bona fide call or prophylactic list of the present employer and were caused

to so appear through the legitimate practice of dentistry as provided for in this chapter. A dentist may not aid or abet or encourage a dental hygienist in the dentist's employ to make use of a so-called prophylactic call list, or to call by telephone or to use written letters transmitted through the mails to solicit patronage from patients formerly served in the office of a dentist formerly employing the hygienist. [1993, c. 600, Pt. A, §86 (AMD).]

A dentist may not permit a dental hygienist operating under the dentist's supervision to perform an operation other than that permitted under section 1095. [1993, c. 600, Pt. A, §86 (AMD).]

SECTION HISTORY
1967, c. 544, §80 (NEW). 1973, c. 303, §3 (AMD). 1981, c. 440, §15 (AMD). 1983, c. 378, §16 (RPR). 1993, c. 600, §A86 (AMD).

Subchapter 5: DENTAL AUXILIARIES

§1100-A. DEFINITION

Duties of dental auxiliaries other than dental hygienists and expanded function dental assistants must be defined and governed by the rules of the Board of 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. [2007, c. 620, Pt. C, §10 (AMD).]

SECTION HISTORY
1971, c. 159, §4 (NEW). 1977, c. 484, §1 (AMD). 1993, c. 600, §A87 (AMD). 2005, c. 322, §2 (AMD). 2007, c. 620, Pt. C, §10 (AMD).

Subchapter 6: DENTURISTS

§1100-B. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following words and phrases shall have the following meanings. [1977, c. 484, §2 (NEW).]

1. **Board.** "Board" means the Board of Dental Examiners.

[1977, c. 484, §2 (NEW) .]

1-A. **Denture.** "Denture" means any removable full or partial upper or lower prosthetic dental appliance to be worn in the human mouth to replace any missing natural teeth.

[2009, c. 227, §1 (NEW) .]

2. **Denturist.** "Denturist" means a person engaging in the practice of denturism.

[1995, c. 590, §3 (AMD) .]

3. **Practice of denturism.** "Practice of denturism" means only:

A. The taking of denture impressions and bite registration for the purpose of or with a view to the making, producing, reproducing, construction, finishing, supplying, altering or repairing of a denture to be fitted to an edentulous or partially edentulous arch or arches; [2009, c. 227, §2 (AMD).]

B. The fitting of a denture to an edentulous or partially edentulous arch or arches, including the making, producing, reproducing, constructing, finishing, supplying, altering and repairing of dentures, without performing alteration to natural or reconstructed tooth structure. A denturist may perform clinical procedures related to the fabrication of a removable tooth-borne partial denture, including cast frameworks; and [2013, c. 83, §1 (AMD).]

C. The procedures incidental to the procedures specified in paragraphs A and B, as defined by the board. [1993, c. 600, Pt. A, §88 (AMD).]

[2013, c. 83, §1 (AMD) .]

SECTION HISTORY
1977, c. 484, §2 (NEW). 1981, c. 440, §16 (AMD). 1993, c. 600, §A88 (AMD). 1995, c. 590, §§3,4 (AMD). 2009, c. 227, §§1-3 (AMD). 2013, c. 83, §1 (AMD).

§1100-C. RULES

1. **Rules required.** The board shall adopt rules necessary to implement this subchapter. Rules adopted may pertain, but are not limited to, continuing education, statement of oral conditions and other record retention requirements, prelicensure permits and the specification of other procedures incidental to the practice of denturism.

[1995, c. 590, §5 (AMD) .]

2. **Contents.**

[1995, c. 590, §5 (RP) .]

3. **Public hearing on rules and regulations.**

[1983, c. 378, §17 (RP) .]

4. **Rules and regulations repealed or amended.**

[1983, c. 378, §17 (RP) .]

5. **Temporary denturist permit.**

[2005, c. 45, §5 (RP) .]

SECTION HISTORY
1977, c. 484, §2 (NEW). 1977, c. 696, §381 (AMD). 1983, c. 378, §17 (AMD). 1995, c. 353, §§9,10 (AMD). 1995, c. 590, §5 (AMD). 2005, c. 45, §5 (AMD).

§1100-D. EXAMINATIONS

1. **Authority.** The board is authorized to prepare and give examinations in the area of denturism for the purpose of licensing denturists. All examinations prepared and given under this subchapter may be prepared and given by the full board, by an appointed subcommittee of the board or by an entity authorized by the board. The board may also recognize a nationally or regionally administered examination given at least annually for applicants to practice denturism in the State.

[1995, c. 590, §6 (AMD) .]

1-A. **Examination content.** Denturist examinations must consist of a clinical examination and a written examination concerning, but not limited to, dental materials, denture technology, United States Department of Health and Human Services Centers for Disease Control guidelines, basic anatomy and basic pathology.

[1995, c. 590, §6 (NEW) .]

2. **Eligibility for examination.**

[1995, c. 590, §6 (RP) .]

2-A. **Eligibility for examination.** Eligibility for taking the examination pursuant to subsection 1 is determined as follows:

A. [2001, c. 337, §3 (RP).]

B. A person is eligible to take the examination if that person:

(1) Is a high school graduate or has obtained high school equivalency; and

(2) Has a diploma from a board-approved denturism postsecondary institution or, until September 30, 2009, has completed an equivalent denturist educational program approved by the board. [2009, c. 227, §4 (AMD).]

[2009, c. 227, §4 (AMD) .]

3. **Application for examination; fee.** An eligible person desiring to take an examination in order to become licensed as a denturist must make a written application to the board to take the examination. This application must be accompanied by an application fee, to be determined by the board, but not to exceed $175 and an examination fee to be determined by the board that may not exceed the actual cost of the examination. The application fee includes the fee for the initial license and is nonrefundable.

[2003, c. 669, §12 (AMD) .]

4. **Additional examinations; fee.** An applicant failing to pass an examination is entitled to a reexamination upon payment of the examination fee set by the board. If an applicant has failed 3 examinations, the board may require the applicant to complete additional educational requirements prior to reexamination.

[1995, c. 590, §6 (AMD) .]

5. **Timing of examination.**

[1993, c. 600, Pt. A, §89 (RP) .]

SECTION HISTORY
1977, c. 484, §2 (NEW). 1981, c. 440, §§17,18 (AMD). 1993, c. 600, §A89 (AMD). 1995, c. 590, §6 (AMD). 2001, c. 337, §3 (AMD). 2003, c. 669, §12 (AMD). 2009, c. 227, §4 (AMD).

§1100-E. LICENSES; ENDORSEMENT

1. **Authority.** The board has the authority to issue licenses to qualified persons to practice denturism pursuant to this subchapter.

[1995, c. 590, §7 (AMD) .]

2. **License issued.** The board shall issue a license for the practice in this State to each person who has passed an examination under section 1100-D. This license authorizes the licensee to practice as a denturist in the State until the expiration date that appears on the license. Beginning October 1, 2009, the board shall require, in addition to passage of the examination, all applicants for licensure to have a diploma and be graduates of a board-approved denturism postsecondary institution. Denturists licensed in this State prior to October 1, 2009 that do not have a diploma from a board-approved denturism postsecondary institution shall successfully complete an upgraded curriculum approved by the board before a license may be issued or renewed.

[2009, c. 227, §5 (AMD) .]

3. **Renewal; renewal fee.** After a license has been issued under subsection 2, and on or before January 1st of odd-numbered years, a denturist must pay to the board a license renewal fee of not more than $175 to be determined by the board in order to renew the license and to continue to be authorized to practice as a denturist in the State.

After the requirements for a license renewal, including any necessary continuing education, have been met, a renewal card of the denturist's license must be issued, which the denturist shall place beside or attach to the denturist's initial license. Denturists who have not paid the renewal fee on or before January 1st must be reinstated upon payment of a late fee, to be determined by the board, of not more than $50 if paid by February 1st. A license to practice is automatically suspended on February 1st and may be reinstated, if approved by the board, on payment of a fee to be determined by the board of not more than $175. A new applicant who has paid the application fee shall pay the biennial licensure fee if the applicant applies in an odd-numbered year or 1/2 the biennial licensure fee if the applicant applies in an even-numbered year.

[2005, c. 45, §6 (AMD) .]

4. **Endorsement.** The board, at its discretion, without examination, may issue a license to an applicant to practice as a denturist who furnishes proof satisfactory to the board that the denturist has been licensed to practice and has actively practiced for a period of 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 denturist. 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 $175.

[2003, c. 669, §14 (AMD) .]

4-A. **Duplicate license.** A licensee must be issued a duplicate license by the board for a fee of $15 upon attestation of loss of the original.

[1995, c. 590, §7 (AMD) .]

5. **Additional prohibitions.** A denturist may not:

A. Falsely claim to be a licensed dentist or allow another to falsely represent the denturist as a licensed dentist; [1993, c. 600, Pt. A, §90 (AMD).]

B. [1995, c. 590, §7 (RP).]

B-1. [2001, c. 337, §4 (RP).]

C. Perform a task beyond the denturist's competence; or [1993, c. 600, Pt. A, §90 (AMD).]

D. Administer, dispense or prescribe a medication or controlled substance. [1993, c. 600, Pt. A, §90 (AMD).]

[2001, c. 337, §4 (AMD) .]

6. **Mental or physical examination.** For the purposes of this subsection, by the application for and acceptance of the license, a licensed denturist is deemed to have given consent to a mental or physical examination when directed by the board. The board may direct the examination whenever it determines a denturist may be suffering from a mental illness that may be interfering with the competent practice of denturism or from the use of intoxicants or drugs to an extent that they are preventing the denturist from practicing denturism competently and with safety to the patients. A denturist examined pursuant to an order of the board does not have the privilege to prevent the testimony of the examining individual or to prevent the acceptance into evidence of the report of an examining individual. Failure to comply with an order of the board to submit to a mental or physical exam requires the District Court to immediately order the license of the denturist suspended until the denturist submits to the examination.

[1995, c. 590, §7 (AMD); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

SECTION HISTORY
1977, c. 484, §2 (NEW). 1977, c. 696, §236 (AMD). 1977, c. 696, §382 (AMD). 1981, c. 440, §§19-22 (AMD). 1983, c. 378, §§18,19 (AMD). 1993, c. 600, §A90 (AMD). 1995, c. 590, §7 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2001, c. 260, §B4 (AMD). 2001, c. 337, §4 (AMD). 2003, c. 669, §§13,14 (AMD). 2005, c. 45, §6 (AMD). 2009, c. 227, §5 (AMD).

§1100-E-1. CONTINUING EDUCATION

As a condition of a license renewal, a denturist licensee shall submit evidence of successful completion of 20 hours of continuing education consisting of board-approved courses completed within the 2 years preceding the application for renewal. The board shall proportionally reduce the continuing education hours required for denturists who have been licensed for less than a 2-year period upon the date of renewal. [1995, c. 590, §8 (NEW).]

SECTION HISTORY
1995, c. 590, §8 (NEW).

§1100-F. PERSONS AND PRACTICES NOT AFFECTED

Nothing in this subchapter may be construed to prohibit a duly qualified dental surgeon, dental laboratory technician or dental hygienist from performing work or services performed by a denturist licensed under this subchapter to the extent those persons are authorized to perform the same services under existing state law. [1993, c. 600, Pt. A, §91 (AMD).]

Nothing in this subchapter may be construed to prevent students of a dental college, university or school of dental hygiene from practicing dental hygiene under the supervision of their instructors. [1993, c. 600, Pt. A, §91 (AMD).]

SECTION HISTORY
1977, c. 484, §2 (NEW). 1993, c. 600, §A91 (AMD).

§1100-G. LIABILITY OF DENTIST FOR DENTURIST'S ACTIONS

(REPEALED)

SECTION HISTORY
1977, c. 484, §2 (NEW). 1993, c. 600, §A91 (AMD). 1995, c. 590, §9 (RP).

§1100-H. LEGISLATIVE REVIEW

(REPEALED)

SECTION HISTORY
1977, c. 484, §2 (NEW). 1981, c. 440, §23 (AMD). 1993, c. 600, §A92 (RP). 1993, c. 685, §B5 (RP).

Subchapter 7: DENTAL RADIOGRAPHERS

§1100-I. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1983, c. 331, §2 (NEW).]

1. **Dental radiography.** "Dental radiography" means the use of ionizing radiation on the maxilla, mandible and adjacent structures of human beings for diagnostic purposes.

[1983, c. 331, §2 (NEW) .]

2. **Direct supervision.**

[1993, c. 600, Pt. A, §93 (RP) .]

2-A. **General supervision.** "General supervision" means the supervising dentist is not required to be physically present in the dental office while procedures are being performed on a patient of record.

[1993, c. 600, Pt. A, §94 (NEW) .]

3. **Licensed dental radiographer.** "Licensed dental radiographer" means a person who practices dental radiography and holds a valid license issued by the board.

[1983, c. 331, §2 (NEW) .]

SECTION HISTORY
1983, c. 331, §2 (NEW). 1993, c. 600, §§A93,94 (AMD).

§1100-J. LICENSE REQUIRED; EXCEPTIONS

1. **License required.** It is unlawful for any person, not otherwise authorized by law, to practice dental radiography without having a current license issued by the board.

[1993, c. 600, Pt. A, §95 (AMD) .]

2. **Medicine, osteopathy, dentistry.** Nothing in the provisions of this subchapter may limit, enlarge or affect the practice of persons licensed to practice medicine, osteopathy or dentistry in this State.

[1983, c. 331, §2 (NEW) .]

3. **Exceptions.** The requirement of a license does not apply to:

A. Dental hygienists licensed pursuant to subchapter IV; [1983, c. 331, §2 (NEW).]

B. A resident physician or a student enrolled in and attending a school or college of medicine, osteopathy, dentistry, dental hygiene and dental assisting or radiologic technology; [1983, c. 331, §2 (NEW).]

C. A person serving in the United States Armed Forces or public health service or employed by the Veterans' Administration or other federal agency while performing official duties, if the duties are limited to that service or employment; or [1993, c. 600, Pt. A, §96 (AMD).]

D. Those persons having a current license to perform radiologic technology pursuant to section 9854 and who are practicing dental radiography under the general supervision of a dentist or physician. [1993, c. 600, Pt. A, §96 (AMD).]

[1993, c. 600, Pt. A, §96 (AMD) .]

SECTION HISTORY
1983, c. 331, §2 (NEW). 1983, c. 712, §1 (AMD). 1993, c. 600, §§A95,96 (AMD).

§1100-K. SUPERVISION REQUIRED

1. **Supervision.** A licensed dental radiographer may practice dental radiography only under the general supervision of a dentist.

[1993, c. 600, Pt. A, §97 (AMD) .]

2. **Prohibition.**

[1993, c. 600, Pt. A, §97 (RP) .]

SECTION HISTORY
1983, c. 331, §2 (NEW). 1993, c. 600, §A97 (AMD).

§1100-L. EMPLOYMENT OF DENTAL RADIOGRAPHERS

1. **Dental radiographers; license.** It is unlawful for a dentist to allow a person to practice dental radiography in the dentist's employment or under the dentist's supervision who does not hold a license to practice dental radiography issued by the board or who is otherwise authorized by law to practice dental radiography.

[1993, c. 600, Pt. A, §98 (AMD) .]

SECTION HISTORY
1983, c. 331, §2 (NEW). 1983, c. 712, §2 (AMD). 1993, c. 600, §A98 (AMD).

§1100-M. QUALIFICATIONS

1. **Requirements.** To qualify for a license to practice dental radiography, an applicant shall meet the following requirements:

A. Be at least 18 years of age; [1983, c. 331, §2 (NEW).]

B. Have a high school diploma or its equivalent, as determined by the Department of Education; and [1989, c. 700, Pt. A, §138 (AMD).]

C. Have successfully passed a test in dental radiologic technique and safety approved by the board. [1983, c. 712, §3 (AMD).]

[1989, c. 700, Pt. A, §138 (AMD) .]

SECTION HISTORY
1983, c. 331, §2 (NEW). 1983, c. 712, §3 (AMD). 1989, c. 700, §A138 (AMD).

§1100-N. APPLICATION

To apply for a license to practice dental radiography, an applicant must submit a written application with supporting documents to the board, on forms provided by the board, and must pay an application fee, which may not exceed $125. [2003, c. 669, §15 (AMD).]

SECTION HISTORY
1983, c. 331, §2 (NEW). 1993, c. 600, §A99 (AMD). 2003, c. 669, §15 (AMD).

§1100-O. RENEWAL

1. **Term of license; renewal.** All licenses to practice dental radiography issued by the board are valid for 5 years from the date of issuance and may be renewed upon application to the board and payment of a renewal fee, which may not exceed $125.

[2003, c. 669, §16 (AMD) .]

SECTION HISTORY
1983, c. 331, §2 (NEW). 1993, c. 600, §A99 (AMD). 2003, c. 669, §16 (AMD).

§1100-P. RULES

1. **Rules.** The board may make rules in accordance with Title 5, chapter 375, which are necessary for the implementation of this subchapter. The rules may include, but need not be limited to, licensure requirements, approved courses, application and renewal procedures and fees.

[1983, c. 331, §2 (NEW) .]

SECTION HISTORY
1983, c. 331, §2 (NEW).

§1100-Q. DISCIPLINARY ACTION

1. **Suspension; revocation; refusal to issue or renew license.** The board may suspend or revoke a license pursuant to Title 5, section 10004. In addition, the board may refuse to issue or renew a license or the District Court may revoke, suspend or refuse to renew a license issued under this subchapter for the following reasons:

A. The practice of fraud or deceit in obtaining a license under this subchapter or in connection with service rendered within the scope of the license issued; [1983, c. 331, §2 (NEW).]

B. Habitual substance abuse that has resulted or is foreseeably likely to result in the licensed dental radiographer being unable to perform the duties of the profession or perform those duties in a manner that would endanger the health or safety of the patients to be served; [1993, c. 600, Pt. A, §99 (AMD).]

C. Incompetence in the practice of dental radiography. A licensed dental radiographer is considered incompetent in the practice if the dental radiographer has:

(1) Engaged in conduct that evidenced a lack of ability or fitness to discharge the duty owed to a client or patient or the general public; or

(2) Engaged in conduct that evidenced a lack of knowledge or inability to apply principles or skills to carry out the practice of dental radiography; [1993, c. 600, Pt. A, §99 (AMD).]

D. Unprofessional conduct. In this context, unprofessional conduct means the violation of a standard of professional behavior that through professional experience has been established in the practice of dental radiography; [1993, c. 600, Pt. A, §99 (AMD).]

E. Subject to the limitations of Title 5, chapter 341, conviction of a crime that involves dishonesty or false statement or that relates directly to the practice of dental radiography or conviction of a crime for which incarceration for one year or more may be imposed; or [1993, c. 600, Pt. A, §99 (AMD).]

F. A violation of this chapter or a rule adopted by the board. [1993, c. 600, Pt. A, §99 (AMD).]

[1993, c. 600, Pt. A, §99 (AMD); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

SECTION HISTORY
1983, c. 331, §2 (NEW). 1993, c. 600, §A99 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF).

§1100-R. PENALTIES; INJUNCTION

(REPEALED)

SECTION HISTORY
1983, c. 331, §2 (NEW). 1993, c. 600, §A100 (RP).

§1100-S. MENTAL OR PHYSICAL EXAMINATION

For the purposes of this section, by application for and acceptance of a license to practice, a licensed dental radiographer is considered to have given consent to a mental or physical examination when directed by the board. The board may direct a dental radiographer to submit to an examination whenever the board determines the dental radiographer may be suffering from a mental illness that may be interfering with the competent practice of dental radiography or from the use of intoxicants or drugs to an extent that they are preventing the dental radiographer from practicing dental radiography competently and with safety to patients. A dental radiographer examined pursuant to an order of the board may not prevent the testimony of the examining individual or prevent the acceptance into evidence of the report of an examining individual. Failure to comply with an order of the board to submit to a mental or physical examination results in the immediate suspension of the license of the dental radiographer by order of the District Court until the dental radiographer submits to the examination. [2003, c. 669, §17 (NEW).]

SECTION HISTORY
2003, c. 669, §17 (NEW).

Chapter 17: ELECTRICIANS

Subchapter 1: GENERAL PROVISIONS

§1101. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1999, c. 386, Pt. F, §1 (AMD).]

1. **Apprentice electrician.** "Apprentice electrician" means an apprentice, as defined in Title 26, section 3201, subsection 1, who is engaged in a written agreement to work at and learn the trade of an electrician under the direct supervision of a master, journeyman or limited electrician.

[2011, c. 491, §14 (AMD) .]

1-A. **Electrical company.** "Electrical company" means a person, firm, corporation or partnership employing licensees engaged in the business of doing electrical installations.

[2011, c. 286, Pt. F, §1 (AMD); 2011, c. 406, §1 (AMD) .]

1-B. **Board.** "Board" means the Electricians' Examining Board.

[2007, c. 402, Pt. I, §1 (NEW) .]

2. **Electrical installations.** "Electrical installations" means the installation, repair, alteration and maintenance of electrical conductors, fittings, devices and fixtures for heating, lighting, power purposes or heat activated fire alarms, intrusion alarms, energy management, telephone, telegraph, cable and closed circuit television, sound systems, conduit and raceway systems and electrically supervised manual fire alarms and sprinkler systems. "Electrical installations" includes complete installations related to photovoltaic, fuel cell and wind power generation systems. "Electrical installations" does not include the installation or repair of portable appliances and other portable electrical equipment, installation of which involves only the insertion of an attachment plug into a fixed receptacle outlet. It is the meaning and intent of this subsection that the word "portable" does not include or apply to any type of fixed electrically operated or driven equipment.

[2003, c. 603, §1 (AMD) .]

3. **Helper electrician.** "Helper electrician" means a person making electrical installations in the employment of a master electrician, limited electrician or electrical company and under the direct supervision of a master, journeyman or limited electrician but who does not qualify under subsection 1.

[1999, c. 386, Pt. F, §1 (AMD) .]

3-A. **Journeyman-in-training electrician.** "Journeyman-in-training electrician" means a person making electrical installations in the employment of a master electrician, limited electrician or electrical company and under the indirect supervision of a limited or master electrician.

[2011, c. 286, Pt. F, §2 (AMD) .]

4. **Journeyman electrician.** "Journeyman electrician" means a person making electrical installations in the employment and under the indirect supervision of a master electrician, limited electrician or electrical company.

[2011, c. 286, Pt. F, §3 (AMD) .]

4-A. **Supervision.** Two apprentice electricians, one helper electrician or 2 helper electricians who are both currently enrolled in, or have completed, a program of study consisting of 576 hours of education as approved by the Electricians' Examining Board or from an accredited institution may work with and under the direct supervision of a master electrician, limited electrician or journeyman electrician. A master electrician who teaches an electrical course at a Maine career and technical education center, a Maine career and technical education region, a Maine community college or an apprenticeship program registered by the Department of Labor may have a maximum of 12 helper or apprentice electricians under direct supervision while making electrical installations that are a part of the instructional program of the school or apprenticeship program, as long as the total value of each installation does not exceed $5,000. An electrical installation may not be commenced pursuant to this subsection without the prior approval of the director or president of the school or apprenticeship program at which the master electrician is an instructor. These installations are limited to those done in buildings or facilities owned or controlled by:

A. School administrative units; and [2005, c. 347, Pt. B, §1 (AMD).]

B. Nonprofit organizations. [2005, c. 347, Pt. B, §1 (AMD).]

C. [2005, c. 347, Pt. B, §2 (RP).]

The Electricians' Examining Board and the municipal electrical inspector of the municipality in which the installation is to be made, if the municipality has an inspector, must be notified of all installation projects entered into pursuant to this subsection prior to the commencement of the project. There must be an inspection by a state electrical inspector or by the municipal electrical inspector of the municipality in which the installation has been made, if the municipality has an inspector, before any wiring on the project is concealed.

[2011, c. 650, §1 (AMD) .]

5. **Limited electrician.** "Limited electrician" means a person doing work to install and service the electrical work related to a specific type of electrically operated equipment or to specific electrical installations only authorized by this license.

[1995, c. 325, §6 (AMD) .]

6. **Master electrician.** "Master electrician" means an individual qualified under this chapter, engaging in, or about to engage in, the business of installing electrical wires, conduits, apparatus, fixtures and other electrical equipment. The certificate must specify the name of the individual who is authorized to enter upon or engage in business as set forth in this chapter.

[1995, c. 336, §1 (AMD) .]

7. **Public service corporation.**

[2011, c. 290, §1 (RP) .]

8. **Utility corporation.** "Utility corporation" means a utility that is not a public utility, as defined in Title 35-A, section 102, or a person, firm or corporation subject to the jurisdiction of the Federal Communications Commission.

[2011, c. 290, §2 (RPR) .]

SECTION HISTORY
1965, c. 385, §2 (AMD). 1965, c. 498, §1 (AMD). 1973, c. 363, (RPR). 1975, c. 767, §§31-35 (AMD). 1977, c. 295, §1 (AMD). 1979, c. 302, §§3,4 (AMD). 1981, c. 577, §§5-9 (AMD). 1983, c. 413, §§31,32 (AMD). 1987, c. 395, §§B3,B4 (AMD). 1987, c. 735, §§42-46 (AMD). 1989, c. 443, §82 (AMD). 1989, c. 450, §§10,11 (AMD). 1993, c. 349, §66 (AMD). 1995,

c. 325, §§1-6 (AMD). 1995, c. 336, §1 (AMD). 1995, c. 502, §§H24,25 (AMD). 1997, c. 119, §1 (AMD). 1999, c. 386, §F1 (AMD). 1999, c. 606, §1 (AMD). 2003, c. 20, §OO2 (AMD). 2003, c. 20, §OO4 (AFF). 2003, c. 545, §5 (REV). 2003, c. 603, §1 (AMD). 2005, c. 347, §§B1,2 (AMD). 2007, c. 402, Pt. I, §§1, 2 (AMD). 2009, c. 415, Pt. A, §17 (AMD). 2011, c. 286, Pt. F, §§1-4 (AMD). 2011, c. 290, §§1, 2 (AMD). 2011, c. 406, §1 (AMD). 2011, c. 491, §14 (AMD). 2011, c. 650, §1 (AMD).

§1102. EXCEPTIONS

The provisions of this chapter shall not apply to the following: [1973, c. 363, (RPR).]

1. **Commissions.**

[1997, c. 119, §2 (RP) .]

1-A. **Public utility.** An entity subject to the jurisdiction of the Public Utilities Commission, the Federal Energy Regulatory Commission or the Federal Communications Commission, including all employees of such an entity, but only to the extent the entity or its employees are making electrical installations in furtherance of providing its authorized service or activities incidental to that authorized service. This exception does not apply to:

A. Installations, other than installation of a meter, inside a customer's building; [2011, c. 290, §3 (NEW).]

B. Installations of mobile home service equipment; and [2011, c. 290, §3 (NEW).]

C. Installations at any business office of a utility corporation that is not physically located adjacent to the utility's generation or transmission and distribution plant; [2011, c. 290, §3 (NEW).]

[2011, c. 290, §3 (RPR) .]

1-B. **Aboveground electric lines.** Electrical work in connection with the construction, installation, operation, repair or maintenance of any aboveground electric line capable of operating at one kilovolt or more.

[2011, c. 290, §4 (NEW) .]

1-C. **Contractor.** An entity, including all employees of such an entity, to the extent the entity has contracted with a public utility, as described in this section, to perform services for the public utility, but only to the extent the public utility would be exempt from this chapter if it were performing the services directly through its employees; or

[2011, c. 290, §5 (NEW) .]

2. **Utility corporations.**

[2011, c. 290, §6 (RP) .]

3. **Mines, ships and carriers.** The electrical work and equipment in mines, pipeline systems, ships, railway rolling stock or automotive equipment.

[1999, c. 386, Pt. F, §2 (AMD) .]

4. **Certain laboratories.**

[1999, c. 386, Pt. F, §3 (RP) .]

5. **Oil burner technicians.**

[1999, c. 386, Pt. F, §4 (RP) .]

6. **Elevator mechanics.**

[1999, c. 386, Pt. F, §5 (RP) .]

7. **Low-energy installers.**

[1991, c. 531, §3 (RP) .]

8. **Gas installers.**

[1999, c. 386, Pt. F, §6 (RP) .]

9. **Plumbers.**

[1999, c. 386, Pt. F, §7 (RP) .]

10. **Pump installers.**

[1999, c. 386, Pt. F, §7 (RP) .]

SECTION HISTORY
1967, c. 69, §1 (AMD). 1967, c. 312, §2 (AMD). 1973, c. 363, (RPR). 1979, c. 127, §177 (AMD). 1987, c. 395, §B5 (AMD). 1987, c. 735, §§47,48 (AMD). 1991, c. 531, §§1-3 (AMD). 1993, c. 659, §A2 (AMD). 1995, c. 114, §§1-4 (AMD). 1995, c. 560, §H12 (AMD). 1995, c. 560, §H17 (AFF). 1997, c. 119, §§2,3 (AMD). 1997, c. 576, §1 (AMD). 1999, c. 386, §§F2-7 (AMD). 1999, c. 657, §13 (AMD). 2011, c. 290, §§3-6 (AMD).

§1102-A. EXCEPTIONS TO LICENSING REQUIREMENTS

(REPEALED)

SECTION HISTORY
1973, c. 363, (NEW). 1981, c. 501, §59 (AMD). 1991, c. 531, §§4-6 (AMD). 1999, c. 386, §F8 (AMD). 2003, c. 551, §§1,2 (AMD). 2009, c. 344, Pt. D, §§7, 8 (AMD). 2009, c. 344, Pt. E, §2 (AFF). 2011, c. 272, §§1-3 (AMD). 2011, c. 286, Pt. F, §5 (RP). 2011, c. 691, Pt. A, §33 (RP).

§1102-B. PERMITS AND INSPECTIONS

1. **Permits required.** Except as otherwise provided in this section, no electrical equipment may be installed or altered unless the person making the installation first obtains a permit from the board.

[2011, c. 286, Pt. F, §6 (AMD) .]

2. **Application procedure.** An application for a permit must be made in a form provided by the board together with any plans, specifications or schedules the board may require. If the board determines that the installation or alteration planned is in compliance with all applicable statutes, ordinances and rules, it shall issue a permit if the fee required under subsection 4 has been paid.

[2011, c. 286, Pt. F, §7 (AMD) .]

3. **Inspection required.** An inspection is required before the electrical wiring is enclosed by the building construction. The electrician making the installation or alteration shall notify the state electrical inspector when the installation is ready for inspection. The inspector shall inspect the installation within a reasonable time so as not to cause undue delay in the progress of the construction contract or installation. The inspector shall determine whether the installation complies with all applicable statutes, ordinances and rules. If the inspector determines that the installation does not so comply, the procedures set forth in section 1104 apply. Any utility corporation must require proof of permit prior to connecting power to the installation.

[2011, c. 286, Pt. F, §8 (AMD) .]

4. **Procedures and fees.** Pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375, the board may adopt procedures for permit applications and the conduct of inspections. The combined service fee for permit and inspection must be paid with every application for a permit. The Director of the Office of Professional and Occupational Regulation shall adopt by rule a schedule of appropriate service fees, but in no event may any scheduled service fee exceed $100. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

[2001, c. 323, §17 (AMD); 2011, c. 286, Pt. B, §5 (REV) .]

5. **Exceptions to permitting requirement.** This section does not apply to the following:

A. Single-family dwellings; [1995, c. 325, §7 (AMD).]

B. The electrical work and equipment employed in connection with the construction, installation, operation, repair or maintenance of any utility by a public utility, or by a contractor working on behalf of a public utility as set forth in section 1102, subsection 1-C, in rendering its authorized service or in any way incidental thereto; [2011, c. 290, §7 (AMD).]

B-1. The electrical work and equipment employed in connection with an aboveground electric line described in section 1102, subsection 1-B; [2011, c. 290, §8 (NEW).]

C. Minor repair work, including the replacement of lamps, fuses, lighting fixtures, switches and sockets, the installation and repair of outlets, radio and other low voltage equipment and the repair of entrance service equipment; [1981, c. 543, §1 (AMD).]

D. Installations or alterations for which a permit and inspection are required by municipal resolution or ordinance under Title 30-A, section 4173; [1987, c. 737, Pt. C, §§73, 106 (AMD); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD).]

E. Any electrical equipment and work, including construction, installation, operation, maintenance and repair in or about industrial or manufacturing facilities; [1999, c. 386, Pt. F, §9 (AMD).]

F. Any electrical equipment and work, including construction, installation, operation, maintenance and repair in, on or about other properties, equipment or buildings, residential or of any other kind, owned or operated by a person engaged in industrial or manufacturing operations provided that the work is done under the supervision of an electrical engineer or master electrician in the employ of that person; [1999, c. 386, Pt. F, §9 (AMD).]

G. Work performed by any person licensed under chapter 139 as an oil burner technician, subject to the restrictions of the license as issued; [2009, c. 344, Pt. D, §9 (AMD); 2009, c. 344, Pt. E, §2 (AFF).]

H. Work performed by a person licensed under chapter 139 as a propane and natural gas installer, when installing propane and natural gas utilization equipment, subject to the restrictions of that person's license; [2009, c. 344, Pt. D, §10 (AMD); 2009, c. 344, Pt. E, §2 (AFF).]

I. Work performed by a person licensed under chapter 49 as a plumber, except that this exception applies only to disconnection and connection of electrical conductors required in the replacement of water pumps and water heaters of the same or smaller size in residential properties; or [1999, c. 386, Pt. F, §9 (NEW).]

J. Work performed by a person licensed under chapter 69-C as a pump installer, except that this exception applies only to disconnection and connection of electrical conductors required in the replacement of water pumps of the same or smaller size in residential properties and the installation of new water pumps and associated equipment of 3 horsepower or smaller. [1999, c. 386, Pt. F, §9 (NEW).]

[2011, c. 290, §§7, 8 (AMD) .]

SECTION HISTORY
1981, c. 432, §2 (NEW). 1981, c. 543, §§1,2 (AMD). 1987, c. 735, §49 (AMD). 1987, c. 737, §§C73,C106 (AMD). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,C10 (AMD). 1991, c. 531, §7 (AMD). 1995, c. 325, §7 (AMD). 1999, c. 386, §F9 (AMD). 2001, c. 323, §17 (AMD). 2009, c. 344, Pt. D, §§9, 10 (AMD). 2009, c. 344, Pt. E, §2 (AFF). 2011, c. 286, Pt. B, §5 (REV). 2011, c. 286, Pt. F, §§6-8 (AMD). 2011, c. 290, §§7, 8 (AMD).

§1103. MUNICIPAL LICENSES NOT REQUIRED; MUNICIPAL PERMITS

A municipality, provisions in charters to the contrary, may not require electricians to be municipally licensed, and a municipality may not issue a permit for an electrical installation unless satisfied that the person applying for the permit complies with this chapter. [2011, c. 420, Pt. M, §1 (AMD); 2011, c. 420, Pt. M, §7 (AFF).]

SECTION HISTORY
1965, c. 385, §3 (RPR). 1973, c. 363, (RPR). 2011, c. 420, Pt. M, §1 (AMD). 2011, c. 420, Pt. M, §7 (AFF).

§1104. STATE ELECTRICAL INSPECTORS

1. **Inspection.** State electrical inspectors, upon an oral complaint of imminent danger or upon written complaint of any owner, lessee or tenant of a building, state fire inspector, fire chief, fire department inspector, personnel of a transmission and distribution utility or local electrical inspector or whenever they determine it necessary at all reasonable hours, for purposes of examination, may enter into and upon all buildings or premises within their jurisdiction and inspect the same. They may enter any building only with the permission of the person having control thereof or, after hearing, upon order of court. Whenever any state electrical inspector finds any electrical installation in any building or structure that does not comply with this chapter, that inspector shall order the same to be removed or remedied and the order must forthwith be complied with by the owner or occupant of the premises or buildings or the electrician that performed the work. Whenever any state electrical inspector finds any electrical installation in any building or structure that creates a danger to other property or to the public, the inspector may forbid use of the building or structure by serving a written order upon the owner and the occupant, if any, to vacate within a reasonable period of time to be stated in the order.

[2009, c. 112, Pt. A, §4 (NEW) .]

2. **Order to correct deficiency; appeal.** Any person ordered by a state electrical inspector to correct an electrical deficiency or to vacate a building or structure may appeal the order to the Electricians' Examining Board by filing with that board within 30 days of receipt of the order a written notice of appeal. The board shall review that appeal and issue its written decision thereof within a reasonable time after receipt of the notice of appeal. If the board upholds the inspector's order, it shall prescribe the time period for the requisite correction specified in its written decision or the time within which that person must vacate the building or structure. The decision must be complied with unless appealed as provided. Any person ordered by the board to correct an electrical deficiency or to vacate a building or structure may appeal the order to the Superior Court in accordance with Title 5, chapter 375, subchapter 7 by filing a petition for review within 48 hours of receipt of the order. The petition for review may be advanced on the docket and receive priority over other cases when the court determines that the interests of justice so require.

[2011, c. 559, Pt. A, §34 (AMD) .]

The decision of the Superior Court on an appeal as provided is final. An order by a state electrical inspector or an order by the Electricians' Examining Board is final and subject to no further appeal upon failure to file a timely, written appeal therefrom as provided. [2009, c. 112, Pt. A, §4 (RPR).]

Upon the failure of any person to carry out a final order as provided, the Electricians' Examining 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 the petition that a lawful final order was issued, it shall order compliance. [2009, c. 112, Pt. A, §4 (RPR).]

SECTION HISTORY
1965, c. 385, §4 (RPR). 1967, c. 69, §2 (AMD). 1971, c. 310, (AMD). 1973, c. 303, §3 (AMD). 1973, c. 363, (RPR). 1981, c. 432, §§3-5 (AMD). 1981, c. 470, §A151 (AMD). 1981, c. 698, §157 (AMD). 1995, c. 325, §8 (AMD). 1999, c. 657, §14 (AMD). 2009, c. 112, Pt. A, §4 (RPR). 2011, c. 559, Pt. A, §34 (AMD).

§1104-A. FAILURE TO COMPLY WITH ORDER OF INSPECTOR

If the owner or occupant of any building or the electrician who performed the work neglects or refuses without justification for more than 10 days to comply with any order of a state electrical inspector concerning electrical installations as provided in this chapter, that person commits a civil violation for which a fine of not less than $100 for each day's neglect may be adjudged. [2011, c. 286, Pt. F, §9 (AMD).]

SECTION HISTORY
1965, c. 498, §2 (NEW). 1973, c. 363, (RPR). 1991, c. 531, §8 (AMD). 2011, c. 286, Pt. F, §9 (AMD).

§1104-B. FAILURE TO COMPLY WITH ORDER OF INSPECTOR

(REPEALED)

SECTION HISTORY
1967, c. 69, §3 (NEW). 1973, c. 363, (RP).

§1105. VIOLATIONS; PENALTY

1. **Unlicensed practice.** A person who violates section 1201 is subject to the provisions of Title 10, section 8003-C.

A. [2007, c. 402, Pt. I, §3 (RP).]

B. [2007, c. 402, Pt. I, §3 (RP).]

C. [2007, c. 402, Pt. I, §3 (RP).]

[2011, c. 420, Pt. M, §2 (AMD); 2011, c. 420, Pt. M, §7 (AFF) .]

2. **Penalty.**

[2007, c. 402, Pt. I, §4 (RP) .]

3. **Strict liability.** Except as otherwise specifically provided, violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

[2003, c. 452, Pt. R, §3 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

4. **Exception.** Subsection 1 does not apply to a person or work excepted under section 1102 or 1201-A.

[2011, c. 420, Pt. M, §3 (AMD); 2011, c. 420, Pt. M, §7 (AFF) .]

5. **Installations by resident; certification.** Nothing in this chapter prevents a person from making electrical installations in a single-family residence occupied by that person or to be occupied by that person as the person's bona fide personal abode, as long as the installation conforms with the standards of the National Electric Code or other standards approved by the board. An electrical installation made under the authority of this subsection, after July 1, 1987, in a newly constructed residence, requires certification by a state or local inspector, master electrician or limited electrician in house wiring prior to the activation of electricity by the utility company.

[2007, c. 402, Pt. I, §5 (AMD) .]

SECTION HISTORY
1965, c. 385, §5 (RPR). 1973, c. 363, (RPR). 1983, c. 413, §33 (AMD). 1987, c. 395, §A143 (AMD). 1999, c. 386, §F10 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2003, c. 452, §X2 (AFF). 2003, c. 452, §R3 (RPR). 2007, c. 402, Pt. I, §§3-5 (AMD). 2011, c. 286, Pt. F, §10 (AMD). 2011, c. 420, Pt. M, §§2, 3 (AMD). 2011, c. 420, Pt. M, §7 (AFF).

Subchapter 2: ELECTRICIANS' EXAMINING BOARD

§1151. APPOINTMENT; VACANCIES; REMOVAL; COMPENSATION

The Electricians' Examining Board, as established by Title 5, section 12004-A, subsection 13 consists of 7 members appointed by the Governor. [2007, c. 402, Pt. I, §6 (AMD).]

The 7 members consist of: one master electrician experienced in low-energy electronics; one electrician who is a bona fide member from organized labor classified as an inside electrician; one electrical inspector; one master electrician from the education field; and one person experienced in the electrical field, all of whom must have at least 10 years of experience in the electrical field, except that the latter 3 need not be active electricians at the time of their appointment; and 2 public members as defined in Title 5, section 12004-A. [2007, c. 402, Pt. I, §6 (AMD).]

Appointments are made for a 3-year term. Appointments of members must comply with Title 10, section 8009. [2007, c. 402, Pt. I, §6 (AMD).]

Any member of the board may be removed from office for cause by the Governor. [2005, c. 235, §3 (AMD).]

SECTION HISTORY

1965, c. 385, §6 (AMD). 1967, c. 69, §4 (AMD). 1969, c. 199, §1 (AMD). 1969, c. 267, §§1,1A (AMD). 1971, c. 592, §26 (AMD). 1973, c. 363, (RPR). 1975, c. 575, §§13,14 (AMD). 1975, c. 579, §14 (AMD). 1975, c. 771, §§339,340 (AMD). 1981, c. 383, §4 (AMD). 1983, c. 413, §34 (RPR). 1983, c. 553, §§26,46 (AMD). 1983, c. 812, §§202,203 (AMD). 1987, c. 735, §§50,51 (AMD). 1989, c. 503, §B125 (AMD). 1991, c. 438, §1 (AMD). 1993, c. 600, §§A101,102 (AMD). 1995, c. 237, §1 (AMD). 1995, c. 397, §28 (AMD). 1999, c. 386, §F11 (AMD). 2005, c. 235, §§1-3 (AMD). 2007, c. 402, Pt. I, §6 (AMD).

§1152. EMPLOYEES

Electrical inspectors have powers throughout the several counties of the State, similar to those of sheriffs in their respective counties, relating to enforcement of this chapter and rules adopted under this chapter. These powers are limited to the power to conduct investigations, issue citations, serve summonses and order corrections of violations in accordance with specific statutory authority. [2003, c. 204, Pt. C, §1 (AMD).]

SECTION HISTORY
1969, c. 267, §2 (AMD). 1971, c. 592, §27 (AMD). 1973, c. 363, (RPR). 1975, c. 579, §15 (AMD). 1983, c. 553, §46 (AMD). 1985, c. 785, §B131 (AMD). 1987, c. 395, §B6 (AMD). 1991, c. 531, §9 (AMD). 1993, c. 220, §1 (AMD). 1995, c. 397, §29 (AMD). 2003, c. 204, §C1 (AMD).

§1153. MEETINGS; CHAIR; RULES

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. The board may adopt, pursuant to Title 5, chapter 375, subchapter 2, rules it determines necessary for the holding of examinations and for carrying out this chapter and shall provide for reciprocity of licensing as required to implement section 1206. [2013, c. 246, Pt. B, §6 (AMD).]

SECTION HISTORY
1973, c. 363, (RPR). 1977, c. 340, §9 (RPR). 1977, c. 694, §561 (AMD). 1977, c. 696, §237 (AMD). 1979, c. 127, §178 (AMD). 1983, c. 413, §35 (RPR). 1987, c. 735, §52 (AMD). 1993, c. 636, §1 (AMD). 1999, c. 386, §F12 (AMD). 2007, c. 402, Pt. I, §7 (AMD). 2013, c. 246, Pt. B, §6 (AMD).

§1153-A. STANDARDS; INSTALLATION

The board shall establish by rule technical standards for the proper installation of electrical equipment. These standards must conform as nearly as practicable to the National Electrical Code, National Fire Protection Association standard #70. The installation of the electrical equipment must also comply with the applicable statutes of the State and all applicable ordinances, orders, rules and regulations of any city or town where the installation is being performed. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2003, c. 204, Pt. C, §2 (RPR).]

SECTION HISTORY
1967, c. 69, §5 (NEW). 1973, c. 363, (RPR). 2003, c. 204, §C2 (RPR).

§1153-B. POWERS

The board has the following duties and powers, in addition to those otherwise set forth in this chapter. [2007, c. 402, Pt. I, §8 (AMD).]

1. **Licenses.** The board shall evaluate the qualifications and approve the examination to be taken by applicants for licensure under this chapter.

[2007, c. 402, Pt. I, §8 (AMD) .]

2. **Hearings.**

[2007, c. 402, Pt. I, §8 (RP) .]

3. **Contracts.**

[2007, c. 402, Pt. I, §8 (RP) .]

4. **Certificate as evidence.**

[2007, c. 402, Pt. I, §8 (RP) .]

SECTION HISTORY
1983, c. 413, §36 (NEW). 1991, c. 531, §10 (AMD). 1995, c. 502, §H48 (AMD). 2007, c. 402, Pt. I, §8 (AMD).

§1154. DISPOSAL OF FEES

(REPEALED)

SECTION HISTORY
1973, c. 363, (RPR). 1983, c. 553, §27 (AMD). 1995, c. 397, §30 (RP).

§1155. INVESTIGATION OF COMPLAINTS; REVOCATION OF LICENSE

(REPEALED)

SECTION HISTORY
1967, c. 69, §6 (AMD). 1973, c. 303, §3 (AMD). 1973, c. 363, (RPR). 1975, c. 575, §15 (AMD). 1977, c. 340, §10 (AMD). 1977, c. 694, §562 (AMD). 1983, c. 413, §37 (RP).

§1155-A. INVESTIGATION OF COMPLAINTS; REVOCATION OF LICENSE

(REPEALED)

SECTION HISTORY
1983, c. 413, §38 (NEW). 1995, c. 325, §§9,10 (AMD). 1995, c. 502, §H48 (AMD). 1999, c. 386, §F13 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 402, Pt. I, §9 (RP).

§1155-B. DENIAL OR REFUSAL TO RENEW LICENSE; DISCIPLINARY ACTION

1. **Disciplinary sanctions.** In addition to the grounds enumerated in Title 10, section 8003, subsection 5-A, paragraph A, the board may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A for:

A. Any gross negligence, incompetency or misconduct in the performance of the work of making electrical installations. Continued failure to conform with applicable regulations of the National Electrical Code, National Electrical Safety Code or of other safety codes that have been approved by the American Standards Association or its successor or other organization approved by the board is prima facie evidence of that gross negligence and incompetency; and [2007, c. 402, Pt. I, §10 (NEW).]

B. While in the business of making electrical installations, employ an unlicensed person to do that work, unless the unlicensed person is an apprentice electrician or electrician's helper as set forth in this chapter. [2011, c. 420, Pt. M, §4 (AMD); 2011, c. 420, Pt. M, §7 (AFF).]

[2011, c. 420, Pt. M, §4 (AMD); 2011, c. 420, Pt. M, §7 (AFF) .]

2. **Reinstatement.** The board, for reasons it considers sufficient, may reissue a license to any person whose license has been revoked, if 4 or more members of the board vote in favor of that reissuance.

[2007, c. 402, Pt. I, §10 (NEW) .]

SECTION HISTORY
2007, c. 402, Pt. I, §10 (NEW). 2011, c. 420, Pt. M, §4 (AMD). 2011, c. 420, Pt. M, §7 (AFF).

§1156. RECORDS

(REPEALED)

SECTION HISTORY
1965, c. 385, §7 (AMD). 1973, c. 363, (RPR). 2003, c. 204, §C3 (RP).

§1157. REPORTS

(REPEALED)

SECTION HISTORY
1975, c. 767, §36 (NEW). 2007, c. 402, Pt. I, §11 (RP).

Subchapter 3: LICENSES

§1201. LICENSE REQUIRED

An electrical installation may not be made unless by an electrician or other person licensed by the board except as provided in this chapter. [2011, c. 420, Pt. M, §5 (AMD); 2011, c. 420, Pt. M, §7 (AFF).]

SECTION HISTORY
1973, c. 363, (RPR). 1987, c. 735, §53 (RPR). 1995, c. 325, §11 (AMD). 2011, c. 286, Pt. F, §11 (AMD). 2011, c. 420, Pt. M, §5 (AMD). 2011, c. 420, Pt. M, §7 (AFF).

§1201-A. EXCEPTIONS TO LICENSING REQUIREMENTS

All electrical installations must comply with the National Electrical Code that is in effect at the time of the installation. The licensing provisions of this chapter do not apply to the entities, persons and licensees enumerated in this section: [2011, c. 286, Pt. F, §12 (NEW).]

1. **Industrial plants.** Industrial plants and regular employees of industrial plants making electrical installations in or about the industrial plant;

[2011, c. 286, Pt. F, §12 (NEW) .]

2. **Other properties of industrial and manufacturing plants.** Other properties of industrial and manufacturing plants and regular employees of other properties of industrial or manufacturing plants making electrical installations in, on or about other properties, equipment or buildings, residential or of any other kind, owned or controlled by the operators of industrial or manufacturing plants, as long as such work is done under the supervision of an electrical engineer in the employ of the operator;

[2011, c. 286, Pt. F, §12 (NEW) .]

3. **Manufacturing plants.** Manufacturing plants and regular employees of manufacturing plants making electrical installations in the manufacture, testing or repair of electrical equipment in the manufacturing plant;

[2011, c. 286, Pt. F, §12 (NEW) .]

4. **Low-energy installers.** Individuals or employees installing telephone, telegraph, cable and closed-circuit television, data communication and sound equipment;

[2011, c. 286, Pt. F, §12 (NEW) .]

5. **Certain laboratories.** A person making an installation in a suitable laboratory of exposed electrical wiring for experimental purposes only;

[2011, c. 286, Pt. F, §12 (NEW) .]

6. **Elevator mechanics.** A person licensed under chapter 133 subject to the restrictions of the license as issued;

[2011, c. 286, Pt. F, §12 (NEW) .]

7. **Oil burner technicians.** A person licensed under chapter 139 subject to the restrictions of the license as issued;

[2011, c. 286, Pt. F, §12 (NEW) .]

8. **Propane and natural gas installers.** A person licensed under chapter 139, when installing propane and natural gas utilization equipment, subject to the restrictions of that person's license;

[2011, c. 286, Pt. F, §12 (NEW) .]

9. **Plumbers.** A person licensed under chapter 49, except that this exemption applies only to disconnection and connection of electrical conductors required in the replacement of water pumps and water heaters of the same or smaller size in residential properties;

[2011, c. 286, Pt. F, §12 (NEW) .]

10. **Pump installers.** A person licensed under chapter 69-C, except that this exception applies only to disconnection and connection of electrical conductors required in the replacement of water pumps of the same or smaller size in residential properties and the installation of new water pumps and associated equipment of 3 horsepower or smaller;

[2011, c. 691, Pt. A, §34 (AMD) .]

11. **Wastewater treatment plants.** Wastewater treatment plants, as defined in section 4171, and regular employees of wastewater treatment plants making electrical installations in or about wastewater treatment plants; or

[2011, c. 691, Pt. A, §34 (AMD) .]

12. **Incidental work.** Regular employees of an owner or a lessee of real property doing incidental electrical work on that property or incidental electrical work by a person whose occupation involves miscellaneous jobs of manual labor. For purposes of this subsection, "incidental electrical work" means minor electrical work, limited to light fixtures and switches, that occurs by chance and that does not require electrical installation calculations.

[2011, c. 691, Pt. A, §35 (NEW) .]

SECTION HISTORY
2011, c. 286, Pt. F, §12 (NEW). 2011, c. 691, Pt. A, §§34, 35 (AMD).

§1202. ISSUANCE OF LICENSES

1. **Application; qualifications.** The board shall issue a license to any person who files a sworn application, who passes an examination conducted by the board as provided in section 1203 to determine his fitness to receive that license and who meets the following qualifications.

A. For a journeyman electrician's license, a person must:

(1) Complete at least 8,000 hours of service as an apprentice or helper electrician or at least 8,000 hours of experience in electrical installations, as defined in section 1101, and satisfactorily complete a program of study comprising 576 hours as approved by the Electricians' Examining Board or from an accredited institution. The 576 hours consist of 225 hours of required study, including an approved course of not less than 45 hours in the current National Electrical Code; and 351 hours of elective study, comprised of all trade-related electives or 225 hours of trade-related courses and 135 hours of degree-related courses;

(2) Be a graduate of an accredited regional applied technology high school 2-year electrical program, have worked for 8,000 hours in the field of electrical installations under the supervision of a master electrician or the equivalent and have completed a course of not less than 45 hours in the current National Electrical Code, the course to be approved by the board;

(3) Be a graduate of an accredited community college electrical program or a vocational-electrical program of the Department of Corrections, have worked for 4,000 hours in the field of electrical installations under the supervision of a master electrician or the equivalent and have completed a course of not less than 45 hours in the current National Electrical Code, the course to be approved by the board. Persons qualifying under this paragraph may sit for the journeyman's examination upon graduation if application is made within one year of graduation; or

(4) Be an electrical apprentice registered with the Department of Labor and have completed 576 hours of related instruction, as defined in this paragraph, prescribed in their apprenticeship program, the 8,000-hour approved program and a course of not less than 45 hours in the current National Electrical Code, the course to be approved by the board. Persons qualifying under this

paragraph may sit for the journeyman's examination after completion of the 576 hours of instruction if application is made within one year of the completion of the instruction. [2011, c. 491, §15 (AMD).]

B. For a master electrician's license, a person must:

(1) Complete at least 4,000 hours of service as a journeyman electrician or at least 12,000 hours of experience in electrical installations, as defined in section 1101, and complete a program of study comprising 576 hours as approved by the Electricians' Examining Board or from an accredited institution. The 576 hours shall consist of 450 hours of required study, including a course of not less than 45 hours in an approved course in the current National Electrical Code and 126 hours of degree-related courses;

Any person who holds a journeyman electrician's or limited license under this section or under former section 1202, subsection 1, prior to July 1987, shall be eligible to take the examination for a master electrician's license, provided that the applicant has completed the number of hours of service or experience required by this subsection and has completed 45 hours of current National Electrical Code. [1987, c. 735, §54 (AMD).]

C. For a limited electrician's license, a person must meet the following requirements.

(1) A limited electrician in water pumps must have 135 hours of electrical education as approved by the Electricians' Examining Board or from an accredited institution and 2,000 hours of experience. The privileges of practice are restricted to electrical work between the branch circuits and power supplies.

(2) A limited electrician in outdoor signs, including sign lighting, must have 135 hours of electrical education as approved by the Electricians' Examining Board or from an accredited institution and 2,000 hours of experience. The privileges of practice do not include branch circuit wiring.

(3) A limited electrician in gasoline dispensing must have 135 hours of electrical education as approved by the Electricians' Examining Board or from an accredited institution and 2,000 hours of experience. The privileges of practice are restricted to electrical work between the branch circuit and the power supply.

(4) A limited electrician in traffic signals, including outdoor lighting of traffic signals, must have 135 hours of electrical education as approved by the Electricians' Examining Board or from an accredited institution and 2,000 hours of experience.

(5) A limited electrician in house wiring must have 225 hours of electrical education as approved by the Electricians' Examining Board or from an accredited institution and 4,000 hours of experience. Privileges of practice are restricted to one-family and 2-family dwellings, including modular and mobile homes. Any person having a limited license in mobile homes prior to the effective date of this section is automatically licensed as a limited electrician in house wiring.

(6) A limited electrician in refrigeration must have 270 hours of electrical education as approved by the Electricians' Examining Board or from an accredited institution and 6,000 hours of experience. Graduates of a Maine community college electrical program in refrigeration approved by the Electricians' Examining Board or from an accredited institution are credited with 4,000 hours of experience upon graduation. Privileges of practice are restricted to all associated wire from the loadside of distribution.

(7) A limited electrician in low energy, including fire alarms, must have 270 hours of electrical education as approved by the Electricians' Examining Board or from an accredited institution and 4,000 hours of experience. Any person having a limited license in fire alarms or experience in the installation of low-energy electronics prior to the effective date of this section qualifies to be licensed as a limited electrician in low energy.

(8) A crane technician must have 135 hours of electrical education as approved by the Electricians' Examining Board or from an accredited institution and 2,000 hours of experience. Any person having work experience in the installation of cranes and hoists, as defined by the National Electrical

Code, prior to the effective date of this subparagraph, qualifies to be licensed as a crane technician. This covers the installation of electrical equipment and wiring used in connection with cranes, monorail hoists, hoists and runways. [2009, c. 112, Pt. A, §5 (AMD).]

D. For a journeyman-in-training electrician's license, a person must be a graduate of an accredited community college or Department of Corrections' electrical program, receive a passing grade on the journeyman's examination and complete 2,000 hours of experience. [2007, c. 398, §2 (AMD).]

The board may establish by rule standards in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, to exercise its discretion to determine if a limited license holder applying for a master electrician's license has adequate experience in all phases of electrical installation to take the examination.

[2011, c. 491, §15 (AMD) .]

2. **Apprentice or helper.** The board may issue a license upon payment of the fee as set under section 1203-A to any person who applies for a license, without examination. Any such person employed by an electrician as an apprentice for the purpose of qualifying for any license mentioned in section 1203, or as an electrician's helper, must apply for a license within 10 days after commencing that employment or starting school in an electrical course.

[2011, c. 286, Pt. F, §13 (AMD) .]

3. **License displayed.** All persons licensed by the board are entitled to receive a license, which must be publicly displayed at the principal place of business of the electrician or, if no such place of business, must be carried on the person and displayed at any time upon request, as long as that person continues in the business as defined.

[2007, c. 402, Pt. I, §14 (AMD) .]

4. **Inactive status licenses.** A licensee who does not desire to perform any of the electrical installations described in section 1101 and who wants to preserve the license while not engaged in any electrical installations may apply for an inactive status license pursuant to Title 10, section 8003, subsection 5-A, paragraph D, subparagraph 5. The fee for inactive status licensure is set under section 1203-A. During inactive status the licensee must renew the license biennially and pay the renewal fee as set under section 1203-A, but is not required to meet the education provisions under the rules of the board.

A licensee surrendering a license pursuant to this section may have the license reinstated to active status by demonstrating compliance within the previous biennium with section 1204 and proper application for an active license. Any license placed on inactive status after the effective date of this subsection and remaining inactive for 3 or more years may be reactivated by the applicant being required to successfully pass a license examination at the discretion of the board.

[2007, c. 402, Pt. I, §15 (AMD) .]

5. **Electrical company.**

[2011, c. 420, Pt. M, §7 (AFF); 2011, c. 420, Pt. M, §6 (RP) .]

SECTION HISTORY
1967, c. 69, §7 (AMD). 1969, c. 267, §3 (AMD). 1973, c. 363, (RPR). 1975, c. 374, §2 (AMD). 1975, c. 767, §37 (AMD). 1977, c. 295, §2 (AMD). 1979, c. 278, (AMD). 1981, c. 383, §5 (RPR). 1981, c. 470, §A152 (AMD). 1981, c. 577, §10 (AMD). 1981, c. 670, (AMD). 1983, c. 553, §28 (AMD). 1985, c. 695, §18 (AMD). 1985, c. 734, (AMD). 1987, c. 395, §B7 (AMD). 1987, c. 402, §A168 (AMD). 1987, c. 735, §§54,55 (AMD).

1987, c. 769, §A120 (AMD). 1989, c. 125, §§1,2 (AMD). 1989, c. 443, §§83-85 (AMD). 1989, c. 483, §A50 (AMD). 1989, c. 878, §§A91,92 (AMD). RR 1991, c. 2, §117 (COR). 1991, c. 531, §11 (AMD). 1991, c. 714, §9 (AMD). 1993, c. 349, §67 (AMD). 1995, c. 325, §§12-15 (AMD). 1999, c. 386, §§F14,15 (AMD). 2003, c. 20, §OO2 (AMD). 2003, c. 20, §OO4 (AFF). 2007, c. 398, §§1, 2 (AMD). 2007, c. 402, Pt. I, §§12-15 (AMD). 2007, c. 695, Pt. A, §36 (AMD). 2009, c. 112, Pt. A, §5 (AMD). 2011, c. 286, Pt. F, §§13, 14 (AMD). 2011, c. 406, §2 (AMD). 2011, c. 420, Pt. M, §6 (AMD). 2011, c. 420, Pt. M, §7 (AFF). 2011, c. 491, §15 (AMD).

§1203. EXAMINATIONS

Applicants for licensure must present to the board a written application for examination and license containing such information as the board may require. [1999, c. 386, Pt. F, §16 (RPR).]

1.

[1999, c. 386, Pt. F, §16 (RP) .]

2.

[1999, c. 386, Pt. F, §16 (RP) .]

3.

[1999, c. 386, Pt. F, §16 (RP) .]

SECTION HISTORY
1965, c. 385, §8 (RPR). 1967, c. 69, §8 (AMD). 1973, c. 363, (RPR). 1973, c. 725, §4 (AMD). 1975, c. 767, §38 (AMD). 1981, c. 577, §11 (AMD). 1983, c. 204, §3 (AMD). 1983, c. 553, §29 (AMD). 1987, c. 395, §B8 (AMD). 1987, c. 735, §56 (AMD). 1993, c. 659, §A3 (AMD). 1995, c. 325, §16 (AMD). 1997, c. 210, §5 (AMD). 1999, c. 386, §F16 (RPR).

§1203-A. FEES

The Director of the Office of Professional and Occupational Regulation within the Department of Professional and Financial Regulation may establish by rule fees for application, examination, licensure, renewal and other purposes authorized under this chapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for any one purpose other than permit and inspection fees may not exceed $150 biennially. Rules adopted pursuant to the section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A. [2001, c. 323, §18 (AMD); 2011, c. 286, Pt. B, §5 (REV).]

1. **Application fee.**

[2001, c. 323, §18 (RP) .]

2. **Examination fee.**

[2001, c. 323, §18 (RP) .]

3. Licensure fee.

[2001, c. 323, §18 (RP) .]

SECTION HISTORY
1999, c. 386, §F17 (NEW). 2001, c. 323, §18 (AMD). 2011, c. 286, Pt. B, §5 (REV).

§1204. RENEWALS

All licenses may be renewed without further examination, upon the payment of the renewal fee as set under section 1203-A and documentation of continuing education as established by rule as the board determines necessary. The expiration dates for licenses issued under this chapter may be established at such other times as the Commissioner of Professional and Financial Regulation may designate. [2007, c. 402, Pt. I, §16 (AMD).]

A license may be renewed up to 90 days after the date of its expiration upon payment of a late fee in addition to the renewal fee as set under section 1203-A. Any person who submits an application for renewal more than 90 days after the license expiration date shall pay an additional late fee as set under section 1203-A and 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 or other requirements. Notwithstanding any other provision of this chapter, the board shall waive examination if a renewal application is received within 90 days after separation from the United States Armed Forces, under conditions other than dishonorable, by a person who has failed to renew that person's license because that person was on active duty in the Armed Forces; except that the waiver of examination may not be granted if the person served more than 4 years in the Armed Forces, except if the person is required by some mandatory provision to serve a longer period and the person submits satisfactory evidence of this mandatory provision to the board. [2007, c. 402, Pt. I, §16 (AMD).]

SECTION HISTORY
1965, c. 385, §9 (RPR). 1967, c. 69, §9 (AMD). 1969, c. 231, §2 (AMD). 1973, c. 363, (RPR). 1975, c. 767, §39 (AMD). 1983, c. 413, §39 (RPR). 1985, c. 551, (AMD). 1987, c. 395, §B9 (AMD). 1987, c. 735, §57 (AMD). 1991, c. 531, §12 (AMD). 1995, c. 325, §17 (AMD). 2007, c. 402, Pt. I, §16 (AMD).

§1205. CORPORATIONS AND PARTNERSHIPS

(REPEALED)

SECTION HISTORY
1973, c. 363, (RP).

§1206. RECIPROCITY

The board shall issue a license to any person who files a sworn application, who is licensed under the laws of another state or territory of the United States and who has been licensed and actively engaged in an electrician's work for a minimum of 6 years, as long as that state or territory has licensing standards and experience requirements at least equivalent to this State's and as long as that state or territory grants similar privileges to persons licensed under this chapter. Reciprocal licenses may not be denied on the basis of current residency. [1993, c. 636, §2 (NEW).]

Notwithstanding other provisions of this section, the board, upon receiving an application for a reciprocal license, may waive the 576 hours of study required for a journeyman or master license pursuant to section 1202. The board may require the applicant to submit such written evidence, verified by oath, as it determines necessary to support the application. [1993, c. 636, §2 (NEW).]

SECTION HISTORY
1993, c. 636, §2 (NEW).

Chapter 18: ELECTROLOGISTS

Subchapter 1: GENERAL PROVISIONS

§1221. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms shall have the following meanings. [1979, c. 87, §1 (NEW).]

1. **Department.** "Department" shall mean the Department of Health and Human Services.

[1979, c. 87, §1 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

1-A. **Electrologist.** "Electrologist" means a person who practices electrology.

[1991, c. 416, §1 (NEW) .]

2. **Electrology.** "Electrology" shall mean the practice of removing hair permanently by applying electricity to the hair follicle to cause growth inactivity to the hair root.

[1979, c. 87, §1 (NEW) .]

2-A. **Electrolysis.** "Electrolysis" means the process by which electrology is done.

[1991, c. 416, §1 (NEW) .]

3. **Person.** "Person" shall mean any individual, firm, partnership, corporation or other association or organization.

[1979, c. 87, §1 (NEW) .]

SECTION HISTORY
1979, c. 87, §1 (NEW). 1991, c. 416, §1 (AMD). 2003, c. 689, §B6 (REV).

§1222. LICENSURE; PENALTY

1. **License required.** A person may not practice electrology in this State unless that person is licensed by the department under this chapter. A license issued under this chapter is valid for one year from the date of issuance.

[2013, c. 264, §8 (AMD) .]

2. **Criminal penalty.**

[2013, c. 264, §8 (RP) .]

3. **Civil penalty.** A person who practices electrology without a license or who violates the sterilization, sanitation or safety standards adopted by the department under this chapter commits a civil violation for which a fine of not less than $500 nor more than $1,000 may be adjudged for each violation.

[2013, c. 264, §8 (NEW) .]

4. **Enforcement.** A person who fails to pay a penalty imposed pursuant to this chapter:

A. May be referred to the Attorney General for appropriate enforcement action; and [2013, c. 264, §8 (NEW).]

B. In addition to all fines and penalties imposed pursuant to this chapter, is liable for any interest, costs and fees incurred by the department, including attorney's fees. [2013, c. 264, §8 (NEW).]

[2013, c. 264, §8 (NEW) .]

SECTION HISTORY
1979, c. 87, §1 (NEW). 2013, c. 264, §8 (AMD).

§1223. EXCEPTION

This chapter shall not apply to any person who is licensed to practice any healing art or science, as defined in section 3751, and who is practicing electrology in the course of that practice. [1979, c. 87, §1 (NEW).]

SECTION HISTORY
1979, c. 87, §1 (NEW).

§1224. MAINE ADMINISTRATIVE PROCEDURE ACT

The provisions of this chapter and anyone acting under them are subject to the Maine Administrative Procedure Act. [1979, c. 87, §1 (NEW).]

SECTION HISTORY
1979, c. 87, §1 (NEW).

Subchapter 2: LICENSURE

§1231. PROCEDURE

(REPEALED)

SECTION HISTORY
1979, c. 87, §1 (NEW). 1991, c. 416, §2 (RP).

§1231-A. LICENSURE REQUIREMENTS

1. **Licensure requirements.** Except as provided in section 1233, the department shall issue a license to any person under this chapter who:

A. Is at least 17 years of age; [1991, c. 416, §3 (NEW).]

B. Has a high school diploma or its equivalent; and [1991, c. 416, §3 (NEW).]

C. Passes an inspection under section 1243 within 60 days before the license is issued. [2013, c. 264, §9 (AMD).]

[2013, c. 264, §9 (AMD) .]

2. **Exemption.** A person who has a valid electrology license from the department as of January 1, 1991 is exempt from the requirements of subsection 1.

[1991, c. 416, §3 (NEW) .]

3. **Reciprocity.** Except as provided in section 1233 and notwithstanding the requirements of subsection 1, the department shall issue a license to any applicant under this chapter who provides the department with evidence that the applicant has 3 years of experience as an electrologist in another state. That proof must consist of notarized copies of the license or registration issued by the state where the applicant last practiced electrology.

[2013, c. 264, §9 (AMD) .]

SECTION HISTORY
1991, c. 416, §3 (NEW). 2013, c. 264, §9 (AMD).

§1232. VALID FOR ONE YEAR

(REPEALED)

SECTION HISTORY
1979, c. 87, §1 (NEW). 2013, c. 264, §10 (RP).

§1233. GROUNDS FOR REFUSAL, SUSPENSION OR REVOCATION

The following are grounds for the department's refusal to issue a license to any person or for the District Court's suspension or revocation of the license of any person: [2013, c. 264, §11 (AMD).]

1. **Noncompliance with rules.** Noncompliance with the rules adopted by the department under this chapter;

[1979, c. 87, §1 (NEW) .]

2. **Conviction of crime.** Conviction of any crime directly related to that person's practice of electrology; and

[1979, c. 87, §1 (NEW) .]

3. **Fraudulently obtaining license.** Attempting to obtain a license or obtaining a license under this chapter by means of fraud or under false pretenses.

[2013, c. 264, §12 (AMD) .]

SECTION HISTORY
1979, c. 87, §1 (NEW). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2013, c. 264, §§11, 12 (AMD).

Subchapter 3: DEPARTMENT OF HUMAN SERVICES

§1241. POWERS AND DUTIES

The department may investigate, inspect, examine and review persons and premises as necessary to properly administer this chapter and may make any appropriate complaint to the District Court. [2013, c. 264, §13 (AMD).]

SECTION HISTORY
1979, c. 87, §1 (NEW). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2013, c. 264, §13 (AMD).

§1242. RULES

The department shall adopt: [1979, c. 87, §1 (NEW).]

1. **Administration.** Rules for the proper administration of this chapter; and

[1979, c. 87, §1 (NEW) .]

2. **Practices of electrology.** Rules governing the practice of electrology relating to training, health, safety, sanitation, equipment, electrolysis procedures and record keeping.

[1991, c. 416, §4 (AMD) .]

SECTION HISTORY
1979, c. 87, §1 (NEW). 1991, c. 416, §4 (AMD).

§1243. INSPECTIONS

Upon any person's request and payment of a fee not to exceed $150, the department shall inspect that person's training, place of practice and equipment for compliance with the rules adopted by the department under this chapter. All fees collected by the department must be deposited in a special revenue account dedicated to a health inspection program. [2009, c. 589, §10 (AMD).]

SECTION HISTORY
1979, c. 87, §1 (NEW). 1979, c. 542, §D2 (AMD). 1981, c. 703, §A43 (RPR). 1991, c. 416, §5 (AMD). 2009, c. 589, §10 (AMD).

Chapter 19: ENGINEERS

Subchapter 1: GENERAL PROVISIONS

§1251. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2013, c. 296, §1 (AMD).]

1. **Board.** "Board" means the State Board of Licensure for Professional Engineers.

[2005, c. 315, §2 (AMD) .]

1-A. **Accreditation board.** "Accreditation board" means the accreditation board for engineering and technology.

[2013, c. 296, §1 (NEW) .]

1-B. **Engineering accreditation commission.** "Engineering accreditation commission" means the engineering accreditation commission of the accreditation board.

[2013, c. 296, §1 (NEW) .]

2. **Engineer-intern.** "Engineer-intern" means a person who has been certified as an engineer-intern by the board.

[2013, c. 296, §1 (AMD) .]

2-A. **National council.** "National council" means the National Council of Examiners for Engineering and Surveying.

[2013, c. 296, §1 (NEW) .]

3. **Practice of professional engineering.** "Practice of professional engineering" means any professional service, such as consultation, investigation, evaluation, planning, design or responsible supervision of construction in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works or projects, wherein the public welfare or the safeguarding of life, health or property is concerned or involved, when such professional service requires the application of engineering principles and data.

[2013, c. 296, §1 (AMD) .]

4. **Professional engineer.** "Professional engineer" means a person who, by reason of a knowledge of mathematics, the physical sciences and the principles of engineering, acquired by professional education and practical experience, is qualified to engage in engineering practice as defined.

[2013, c. 296, §1 (AMD) .]

5. **Technology accreditation commission.** "Technology accreditation commission" means the technology accreditation commission of the accreditation board.

[2013, c. 296, §1 (NEW) .]

SECTION HISTORY
1995, c. 355, §1 (AMD). 2005, c. 315, §2 (AMD). 2013, c. 296, §1 (AMD).

§1252. OTHER LEGALLY RECOGNIZED PROFESSIONS NOT AFFECTED

This chapter shall not be construed to affect or prevent the practice of any other legally recognized profession.

§1253. CORPORATIONS, PARTNERSHIPS AND ASSOCIATIONS

A firm, copartnership, corporation or joint stock association may engage in the practice of professional engineering in this State, provided that the practice is carried on only by professional engineers licensed in this State. [2005, c. 315, §3 (AMD).]

SECTION HISTORY
1983, c. 413, §40 (AMD). 2005, c. 315, §3 (AMD).

§1254. PUBLIC WORKS

1. **Use of licensed professional engineer not required.** Except as provided in subsection 2, any department of this State or any of its political subdivisions or any county, city, town, township or plantation may engage in construction of any public work involving professional engineering without procuring the services of a licensed professional engineer, as long as the contemplated expenditure for the completed project does not exceed $100,000 and the work, both as performed and as completed, does not create an undue risk to public safety or welfare.

[2005, c. 315, §4 (AMD) .]

2. **Exception.** A department of this State may require the services of a licensed professional engineer for any public works project if the services of the professional engineer are required to comply with any provision of law or rule.

[2005, c. 315, §4 (AMD) .]

SECTION HISTORY
1997, c. 304, §1 (RPR). 2005, c. 315, §4 (AMD).

§1255. EXEMPTIONS

The following persons are exempt from this chapter: [1991, c. 442, §1 (AMD).]

1. **Limited practice by nonresident.** A person not a resident of and not having established a place of business in this State, practicing or offering to practice the profession of engineering when such practice does not exceed more than 30 consecutive days in any calendar year, if the person is legally qualified by licensure to practice the profession in that person's own state or country in which the requirements and qualifications for licensure are not lower than those specified in this chapter. To practice under this section, the person must apply in writing and receive authorization;

[2005, c. 315, §5 (AMD) .]

2. **Nonresident becoming resident.** A person not a resident of and not having established a place of business in this State, or who has become a resident of this State, practicing or offering to practice in the State for more than 30 days in any calendar year the profession of engineering, and having filed with the board an application for a license and having paid the fee required by this chapter. The exemption continues only for such time as the board requires for the consideration of the application for licensure, if the person is legally qualified to practice the profession of engineering in the state or country of residence in which the requirements and qualifications for obtaining a license are not lower than those specified in this chapter.

A person must apply in writing and receive authorization in order to practice pursuant to the provisions of this subsection;

[2005, c. 315, §6 (AMD) .]

3. **Certain employees.** An employee or a subordinate of a person holding a license under this chapter, or an employee of a person exempted from licensure by subsections 1 and 2, provided that the practice does not include responsible charge or design or supervision by the employee or subordinate;

[2005, c. 315, §7 (AMD) .]

4. **United States Government employees.** Officers and employees of the Government of the United States while engaged within this State in the practice of the profession of engineering for said government.

5. **Interstate commerce corporation employees.** An officer or employee of a corporation engaged in interstate commerce as defined in the Act of Congress entitled "An Act to Regulate Commerce" approved February 4, 1887, as amended, or in interstate communication as defined in the Act of Congress entitled "Communications Act of 1934" approved June 9, 1934, while working solely as an employee of such corporation. An officer or employee of such corporation customarily in responsible charge of the engineering work of such corporation within this State must be a licensee under this chapter;

[2005, c. 315, §8 (AMD) .]

6. **Subsurface sewage disposal.** Persons who have been licensed by the Department of Health and Human Services pursuant to Title 22, section 42, subsection 3-A, solely for the purpose of work relating to subsurface sewage disposal systems. This exemption does not apply to the board's power to license or to revoke, suspend or refuse to renew the license of any licensee;

[2007, c. 379, §1 (AMD) .]

7. **Person who performs work on certain vessels.** A person who performs work only on vessels under 200 feet long; and

[2007, c. 379, §2 (AMD) .]

8. **Persons engaged in design of minor construction.** Persons engaged in the design of the following minor construction do not need to provide stamped and sealed plans and specifications unless specifically required by the code enforcement officer.

A. Detached one-family or 2-family residences; [2007, c. 379, §3 (NEW).]

B. Farm buildings with an overall floor plan not exceeding 3,000 square feet; [2007, c. 379, §3 (NEW).]

C. Single bathroom additions or renovations in an existing building if there is no impact on the building’s compliance with the National Fire Protection Association Life Safety Code adopted by the Department of Public Safety, Office of the State Fire Marshal; [2007, c. 379, §3 (NEW).]

D. Revisions or additions to plumbing systems costing up to $10,000 if the work has no impact on the building’s compliance with the National Fire Protection Association Life Safety Code adopted by the Department of Public Safety, Office of the State Fire Marshal and does not involve roof drains; [2007, c. 379, §3 (NEW).]

E. Revisions to existing heating, ventilation and air conditioning systems and design of new heating, ventilation and air conditioning systems if the work has no impact on the building’s compliance with the National Fire Protection Association Life Safety Code adopted by the Department of Public Safety,

Office of the State Fire Marshal requirements and the project does not include more than one heating, ventilation and air conditioning unit with a maximum cooling capacity of 5 tons or heating capacity of 200,000 BTUs; [2007, c. 379, §3 (NEW).]

F. Revisions or additions to structural systems costing up to $10,000 if the design is in accordance with the tables provided in the International Building Code; and [2007, c. 379, §3 (NEW).]

G. Revisions or additions to electrical systems costing up to $10,000 if the work has no impact on the building's compliance with the National Fire Protection Association Life Safety Code adopted by the Department of Public Safety, Office of the State Fire Marshal. [2007, c. 379, §3 (NEW).]

All the work that is done under these exemptions must be in accordance with the licensing requirements of the trade involved, including, but not limited to, all construction industry design standards such as the National Fire Protection Association standards, state and municipal building and energy codes, the State Fire Marshal's requirements and ASHRAE Standard 62 and ASHRAE Standard 90.

[2007, c. 379, §3 (NEW) .]

SECTION HISTORY
1975, c. 760, §5 (AMD). 1991, c. 442, §§1,2 (AMD). 1995, c. 355, §§2,3 (AMD). 1999, c. 186, §§1,2 (AMD). 2003, c. 34, §1 (AMD). 2003, c. 689, §B6 (REV). 2005, c. 315, §§5-9 (AMD). 2007, c. 379, §§1-3 (AMD).

§1256. VIOLATIONS; PENALTIES; INJUNCTION

A person who practices or offers to practice the profession of engineering in this State without being licensed or exempted in accordance with this chapter, or a person presenting or attempting to use the license or the seal of another, or a person who gives a false or forged evidence of any kind to the board or to a member of the board in obtaining a license, or a person who falsely impersonates any other licensee of like or different name, or a person who attempts to use an expired or revoked license, or a person who violates any of the provisions of this chapter for which a penalty has not been prescribed commits a civil violation for which a fine of not more than $1,000 may be adjudged. [2005, c. 315, §10 (AMD).]

The State may bring an action in Superior Court to enjoin a person from violating this chapter, regardless of whether other administrative, civil or criminal proceedings have been or may be instituted. [2001, c. 421, Pt. B, §95 (AMD); 2001, c. 421, Pt. C, §1 (AFF).]

SECTION HISTORY
1983, c. 413, §41 (AMD). 1995, c. 355, §4 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2001, c. 421, §B95 (AMD). 2001, c. 421, §C1 (AFF). 2005, c. 315, §10 (AMD).

Subchapter 2: STATE BOARD OF LICENSURE
HEADING: PL 2005, C. 315, §11 (RPR)

§1301. APPOINTMENT; TERM

The State Board of Licensure for Professional Engineers, as established by Title 5, section 12004-A, subsection 16, administers this chapter. The board consists of 7 members. Six members are appointed by the Governor, of which 5 must be professional engineers who have the qualifications required by section 1302 and one must be a public member. The 7th member is the Chief Engineer of the Department of Transportation who shall serve as an ex officio voting member. To the extent that qualified nominees are available, appointment of nonpublic members must be made to ensure that a variety of engineering disciplines are represented. Nominees for appointment may be recommended to the Governor by representative engineering societies in the State. [2005, c. 315, §12 (AMD).]

Appointments are for 5-year terms. Appointments of members must comply with Title 10, section 8009. [2007, c. 695, Pt. B, §8 (AMD).]

SECTION HISTORY
1975, c. 575, §16 (AMD). 1975, c. 771, §341 (AMD). 1983, c. 413, §42 (RPR). 1983, c. 812, §204 (AMD). 1989, c. 503, §B126 (AMD). 1991, c. 442, §3 (AMD). 1993, c. 600, §A103 (AMD). 1995, c. 355, §5 (AMD). 2005, c. 315, §12 (AMD). 2007, c. 695, Pt. B, §8 (AMD).

§1302. QUALIFICATIONS

Each member of the board must be a citizen of the United States and a resident of this State, and each engineer member must have been engaged in the practice of the profession of engineering for at least 12 years and must have been in responsible charge of engineering work for at least 5 years. Teaching of engineering courses in a college or university offering an approved engineering curriculum of 4 years or more may be construed as responsible charge of engineering work. [1999, c. 186, §3 (AMD).]

SECTION HISTORY
1975, c. 575, §17 (AMD). 1995, c. 355, §6 (AMD). 1999, c. 186, §3 (AMD).

§1303. COMPENSATION AND EXPENSES

Members of the board shall be compensated according to the provisions of Title 5, chapter 379. Clerical expenses shall not be allowed any member of the board, except as provided in section 1307. [1983, c. 812, §205 (RPR).]

SECTION HISTORY
1983, c. 812, §205 (RPR).

§1304. REMOVAL

The Governor may remove a member of the board for cause. [1993, c. 600, Pt. A, §104 (AMD).]

SECTION HISTORY
1975, c. 771, §342 (AMD). 1983, c. 413, §43 (AMD). 1993, c. 600, §A104 (AMD).

§1305. ORGANIZATION AND MEETINGS

The board shall meet at least once a year to conduct its business and to elect its officers. 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. [2005, c. 315, §13 (AMD).]

The board shall elect or appoint annually a chair and vice-chair. A quorum of the board consists of not less than 4 members. The board may adopt and have an official seal. [2005, c. 315, §13 (AMD).]

SECTION HISTORY
1975, c. 575, §18 (AMD). 1983, c. 413, §44 (RPR). 2005, c. 315, §13 (AMD).

§1306. POWERS

The board shall have the following duties and powers in addition to those otherwise set forth in this chapter. [1983, c. 413, §45 (RPR).]

1. **Licenses; enforcement.** The board shall evaluate the qualifications and supervise the examination of applicants for licensure under this chapter. The board may order an investigation of a licensee on its own motion or on written complaint filed with the board regarding noncompliance with or violation of any section of this chapter or of any rules adopted by the board.

[2005, c. 315, §14 (AMD) .]

2. **Rules.** The board may, in accordance with procedures established by the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter II, adopt such rules as may be reasonably necessary for the proper performance of its duties and the administration of this chapter.

[1983, c. 413, §45 (NEW) .]

3. **Hearings.** Hearings may be conducted by the board to assist with investigations, 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 not refuse to renew a license for any reason other than failure to pay a required fee and failure to meet the continuing education requirements, unless it has afforded the licensee an opportunity for an adjudicatory hearing. The board shall hold an adjudicatory hearing at the written request of any person who is denied a license without a hearing for any reason other than failure to pay a required fee, provided that the request for hearing is received by the board within 30 days of the applicant's receipt of written notice of the denial of the application, the reasons for the denial and the right to request a hearing. Hearings must be conducted in conformity with Title 5, chapter 375, subchapter 4 to the extent applicable. The board may subpoena witnesses, records and documents in any hearing it conducts.

[2005, c. 315, §15 (AMD) .]

4. **Contracts.** The board may enter into contracts to carry out its responsibilities under this chapter.

[1983, c. 413, §45 (NEW) .]

SECTION HISTORY
1977, c. 694, §563 (AMD). 1983, c. 413, §45 (RPR). 1995, c. 355, §7 (AMD). 2005, c. 315, §§14,15 (AMD).

§1307. RECEIPTS AND DISBURSEMENTS

The board shall receive and account for all money derived under this chapter and shall pay the money, as provided by law, to the Treasurer of State, who shall keep the money in a separate fund to be known as the "Professional Engineers' Fund." The board may make other expenditures from this fund, upon itemized vouchers approved by the chair of the board, that in the opinion of the board are reasonably necessary for the proper performance of its duties under this chapter. [1999, c. 186, §4 (AMD).]

SECTION HISTORY
1995, c. 355, §8 (AMD). 1999, c. 186, §4 (AMD).

§1308. RECORDS AND REPORTS

The board shall keep such records and minutes as are necessary to the ordinary dispatch of its functions. [1983, c. 413, §46 (RPR).]

Not later than August 1st of each year, the board shall submit to the Commissioner of Professional and Financial Regulation a report of its transactions of the preceding fiscal year ending June 30th and shall transmit to the commissioner a complete statement of the receipts and expenditures of the board, attested by affidavits of its chair. [2005, c. 315, §16 (AMD).]

The commissioner shall act as a liaison between the board and the Governor. [1983, c. 413, §46 (RPR).]

The commissioner may not exercise or interfere with the exercise of discretionary, regulatory or licensing authority granted by statute to the board. The commissioner may require the board to be accessible to the public for complaints and questions during regular business hours and to provide any information the commissioner requires in order to ensure that the board is operating administratively within the requirements of this chapter. [1993, c. 659, Pt. B, §6 (AMD).]

The board shall submit to the Commissioner of Professional and Financial Regulation its budgetary requirements in the same manner as is provided in Title 5, section 1665. The budget submitted by the board to the commissioner must be sufficient to enable the board to comply with this subchapter. [1993, c. 659, Pt. B, §7 (AMD).]

SECTION HISTORY
1977, c. 604, §15 (AMD). 1981, c. 456, §§A107,A108 (AMD). 1983, c. 413, §46 (RPR). 1983, c. 553, §46 (AMD). 1983, c. 758, §§5,6 (AMD). RR 1993, c. 1, §§82,83 (COR). 1993, c. 659, §§B6,7 (AMD). 2005, c. 315, §16 (AMD).

§1309. ROSTER OF LICENSED PROFESSIONAL ENGINEERS

A roster showing the names of all active licensed professional engineers and newly certified engineer-interns is prepared by the board during the first calendar quarter of each even-numbered year. A supplementary roster of newly licensed professional engineers and newly certified engineer-interns is prepared by the board during the first calendar quarter of each odd-numbered year. The rosters must give the place of business of each listed licensed professional engineer. Copies of the roster and of the supplementary roster are provided to each active professional engineer listed on the roster and furnished to the public upon request for such fees as the board may authorize in its rules. [2005, c. 315, §17 (AMD).]

SECTION HISTORY
1979, c. 13, §9 (RP). 1979, c. 541, §A206 (REEN). 1981, c. 2, (RPR). 1981, c. 456, §A109 (AMD). 1981, c. 698, §158 (AMD). 1991, c. 442, §4 (AMD). 1995, c. 355, §9 (AMD). 1999, c. 186, §5 (AMD). 2005, c. 315, §17 (AMD).

Subchapter 3: LICENSURE HEADING: PL 2005, C. 315, §18 (RPR)

§1351. LICENSURE REQUIRED

In order to safeguard life, health and property, any person practicing or offering to practice the profession of engineering is required to submit evidence of qualification to practice the profession of engineering and must be licensed as provided. It is unlawful for any person to practice or to offer to practice the profession of engineering in the State or to use in connection with the person's name or otherwise assume, use or advertise any title or description tending to convey the impression that the person is a professional engineer, unless that person has been duly licensed or exempted under this chapter. [2005, c. 315, §19 (AMD).]

SECTION HISTORY
1995, c. 355, §10 (AMD). 2005, c. 315, §19 (AMD).

§1352. QUALIFICATIONS

(REPEALED)

SECTION HISTORY

1983, c. 413, §47 (AMD). 1991, c. 442, §5 (AMD). 1995, c. 355, §11 (AMD). 1999, c. 186, §6 (RP).

§1352-A. QUALIFICATIONS

To be eligible for licensure as a professional engineer, an applicant must submit 5 references with the application for licensure as a professional engineer, 3 of which must be from licensed professional engineers from this State or another state, territory or possession of the United States, District of Columbia or any foreign country having personal knowledge of the applicant's engineering experience. To be eligible for certification as an engineer-intern, an applicant must submit 3 character references with the application for certification. Each applicant shall demonstrate that the applicant is trustworthy and competent to engage in the practice of professional engineering in such a manner as to safeguard the interests of the public. [2005, c. 315, §20 (AMD).]

1. **Professional engineer.** Minimum evidence satisfactory to the board that the applicant is qualified for licensure as a professional engineer includes the following.

A. An applicant for licensure by endorsement or comity who provides proof that the applicant is a licensed professional engineer, in good standing, in another state, territory or possession of the United States, District of Columbia or any foreign country and whose qualifications meet the requirements of this chapter upon application may be licensed without further examination. To seek licensure under this paragraph, the applicant must be a graduate of an engineering curriculum approved by the engineering accreditation commission or of an equivalent engineering curriculum and have not less than 4 years of acceptable engineering experience after graduation and have been licensed by passing the national council principles and practice of engineering examination and the fundamentals of engineering examination. [2013, c. 296, §2 (AMD).]

B. A person holding a certificate of record verification issued by the national council whose qualifications meet the requirements of this chapter upon application may be licensed without further examination. [2013, c. 296, §2 (AMD).]

C. An applicant who provides proof of graduation from an engineering curriculum approved by the engineering accreditation commission or of an equivalent engineering curriculum of 4 years or more; has passed the national council examination in the fundamentals of engineering; has a record of an additional 4 years or more of progressive engineering experience, after graduation, of a grade and character that indicates to the board that the applicant may be competent to practice and has experienced increased engineering responsibilities; and has passed the national council examination in the principles and practice of engineering may be licensed as a professional engineer. An applicant for licensure may not sit for the principles and practice of engineering examination until the applicant has passed the fundamentals of engineering examination. [2013, c. 296, §2 (AMD).]

D. An applicant who provides proof of graduation from an engineering technology curriculum approved by the technology accreditation commission or of an equivalent engineering technology curriculum of 4 years or more; has passed the national council examination in the fundamentals of engineering; has a record of an additional 4 years or more of progressive engineering experience, after graduation, of a grade and character that indicates to the board that the applicant may be competent to practice and has experienced increased engineering responsibilities; and has passed the national council examination in the principles and practice of engineering may be licensed as a professional engineer. An applicant for licensure may not sit for the principles and practice of engineering examination until the applicant has passed the fundamentals of engineering examination. [2013, c. 296, §2 (AMD).]

E. An applicant who has a baccalaureate from an engineering or engineering technology curriculum that has not been approved by the accreditation board or from an allied science curriculum of 4 years or more; has passed the national council written examination in the fundamentals of engineering; has a record of an additional 8 years or more of progressive engineering experience, after graduation, of a grade and character that indicates to the board that the applicant may be competent to practice and has experienced increased engineering responsibilities; and has passed the national council examination in

the principles and practice of engineering may be licensed as a professional engineer. An applicant for licensure may not sit for the principles and practice of engineering examination until the applicant has passed the fundamentals of engineering examination. [2013, c. 296, §2 (AMD).]

F. [2005, c. 315, §20 (RP).]

G. [2013, c. 296, §2 (RP).]

H. [2013, c. 296, §2 (RP).]

Engineering teaching experience of 4 years or more in a college or university offering an engineering or engineering technology curriculum approved by the accreditation board may be considered as engineering experience.

[2013, c. 296, §2 (AMD) .]

2. Engineer-intern. Minimum evidence satisfactory to the board that the applicant is qualified for certification as an engineer-intern includes the following.

A. An applicant for certification as an engineer-intern is eligible to sit for the fundamentals of engineering examination during the applicant's senior year of college before graduation from a program approved by the accreditation board. Certification as an engineer-intern may not take place until verification of graduation is received. [2013, c. 296, §3 (AMD).]

B. An applicant who provides proof of graduation from an engineering curriculum approved by the engineering accreditation commission or of an equivalent engineering curriculum of 4 years or more and has passed the national council examination in the fundamentals of engineering may be certified as an engineer-intern. [2013, c. 296, §3 (AMD).]

C. An applicant who provides proof of graduation from an engineering technology curriculum approved by the technology accreditation commission of 4 years or more and has passed the national council examination in the fundamentals of engineering may be certified as an engineer-intern. [2013, c. 296, §3 (AMD).]

D. An applicant who is a graduate of an engineering curriculum not approved by the accreditation board or an allied science curriculum of 4 years or more and who has submitted a transcript showing the completion of the minimum number of engineering science and design credits as required in a curriculum approved by the accreditation board and who has passed the national council examination in the fundamentals of engineering may be certified as an engineer-intern. [2013, c. 588, Pt. A, §40 (AMD).]

E. [2005, c. 315, §20 (RP).]

Certification as an engineer-intern is valid for an indefinite period.

[2013, c. 588, Pt. A, §40 (AMD) .]

A person having the necessary qualifications prescribed in this chapter is eligible for licensure even though the person may not be practicing the engineering profession at the time of submitting an application. [2005, c. 315, §20 (AMD).]

SECTION HISTORY
1999, c. 186, §7 (NEW). 2005, c. 315, §20 (AMD). 2013, c. 296, §§2, 3 (AMD). 2013, c. 588, Pt. A, §40 (AMD).

§1353. APPLICATION; FEES

Application for licensure as a professional engineer or certification as an engineer-intern must be made on a form prescribed and furnished by the board, contain statements made under oath showing the applicant's education and a detailed summary of the applicant's technical experience and contain references as set forth

in section 1352-A, none of which may be from members of the board. An application fee may be established by rule by the board in an amount that is reasonable and necessary for its purpose. [2013, c. 296, §4 (AMD).]

The licensure fee for professional engineers must be established by rule by the board in an amount not to exceed $200. [2005, c. 315, §21 (AMD).]

The fee for engineer-intern certification or enrollment must be established by rule by the board in an amount not to exceed 1/2 of the licensure fee for professional engineers. [2005, c. 315, §21 (AMD).]

SECTION HISTORY
1983, c. 413, §48 (AMD). 1991, c. 442, §6 (AMD). 1995, c. 355, §12 (AMD). RR 1999, c. 1, §44 (COR). 2005, c. 315, §21 (AMD). 2013, c. 296, §4 (AMD).

§1354. EXAMINATIONS

Examinations required on fundamental engineering subjects may be taken as provided in section 1352-A. The principles and practices of engineering examinations may not be taken until the applicant has completed a period of engineering experience as set forth in section 1352-A. [2013, c. 296, §5 (AMD).]

The passing grade on any examination is established by the board. If an applicant receives a failing grade on the principles and practices of engineering examination, that applicant may be readmitted to 2 subsequent examinations. An applicant who fails to complete the application process within 5 years, or who fails the principles and practices of engineering examination a 3rd time must reapply to the board, meet qualification requirements that are in effect at the time of the new application and present 3 new references and new documentation for each subsequent request for reexamination satisfactory to the board that the applicant has acquired additional education and experience and is prepared to retake the examination. Upon approval by the board, that applicant may be permitted to retake the examination. [2013, c. 296, §5 (AMD).]

SECTION HISTORY
1983, c. 468, §2 (AMD). 1995, c. 355, §13 (AMD). 1999, c. 186, §8 (AMD). 2013, c. 296, §5 (AMD).

§1355. LICENSES; SEALS

The board shall issue a license upon payment of the licensure fee as provided for in this chapter, to any applicant who, in the opinion of the board, has satisfactorily met all the requirements of this chapter. The license authorizes the practice of "professional engineering." Licenses must show the full name of the licensee, have a serial number and be signed by the chair of the board under seal of the board. [2005, c. 315, §22 (AMD).]

The issuance of a license by the board is evidence that the person named therein is entitled to all the rights and privileges of a licensed professional engineer while the license remains unrevoked or unexpired. [2005, c. 1, §15 (COR).]

Each licensee upon licensure may obtain a seal of the design authorized by the board, bearing the licensee's name and the legend "licensed professional engineer." Plans, specifications, plats and reports issued by a licensee must be stamped with the seal, as prescribed in the rules of the board, during the life of the licensee's license, but it is unlawful for anyone to stamp or seal any document with the seal after the license of the licensee named thereon has expired or has been revoked, unless the license has been renewed or reissued. [2005, c. 315, §22 (AMD).]

SECTION HISTORY
RR 2005, c. 1, §15 (COR). 2005, c. 315, §22 (AMD).

§1356. REVOCATION AND REISSUANCE

The board may suspend or revoke the license of an engineer or the certificate of an engineer-intern pursuant to Title 5, section 10004. The board may refuse to issue or renew or the District Court, pursuant to Title 4, chapter 5, may revoke, suspend or refuse to renew the license of a licensed professional engineer or the certificate of an engineer-intern who is found guilty of: [2005, c. 315, §23 (AMD).]

1. **Fraud or deceit.** The practice of any fraud or deceit in obtaining a license as professional engineer or a certificate as an engineer-intern;

[2005, c. 315, §23 (AMD) .]

2. **Negligence or misconduct.** Any gross negligence, incompetency or misconduct in the practice of professional engineering as a licensed professional engineer or as an engineer-intern; or

[2005, c. 315, §23 (AMD) .]

3. **Violations.** Violating any provision of this chapter or any rule of the board.

[1983, c. 413, §49 (AMD) .]

Any person may register a complaint of fraud, deceit, gross negligence, incompetency or misconduct against any licensed professional engineer or any engineer-intern. These complaints must be in writing, signed by the individual making the complaint and filed with the board. [2005, c. 315, §23 (AMD).]

The board, for reasons it may determine sufficient, may reissue a license to a professional engineer or a certificate to an engineer-intern to any person whose license or certificate has been revoked, provided that 4 or more members of the board vote in favor of that reissuance. A new license as a professional engineer or certificate as an engineer-intern, to replace any license or certificate revoked, lost, destroyed or mutilated, may be issued, subject to the rules of the board and a charge established by the board. [2005, c. 315, §23 (AMD).]

SECTION HISTORY
1975, c. 575, §19 (AMD). 1977, c. 694, §§564,565 (AMD). 1983, c. 413, §49 (RPR). 1995, c. 355, §14 (AMD). 1999, c. 186, §9 (AMD). 1999, c. 547, §B61 (AMD). 1999, c. 547, §B80 (AFF). 2005, c. 315, §23 (AMD).

§1357. EXPIRATION AND RENEWALS

Licenses expire on the last day of December of odd-numbered years following their issuance or renewal and become invalid on that date unless renewed. The board shall notify every person licensed under this chapter of the date of the expiration of that person's license and the amount of the fee that is required for its renewal for a 2-year period, except when the applicant has become licensed during the first year of the 2-year period, then the renewal fee is for the remaining one year of that 2-year period. The notice must be provided at least one month in advance of the date of the expiration of the license. Renewal may be effected at any time after completion of continuing education requirements and after receipt of notice by the payment of a fee established by rule by the board, which may not exceed $50 annually. Licenses may be renewed up to 90 days after the date of expiration upon payment of a late fee of $10 in addition to the renewal fee. Any person who submits an application for renewal more than 90 days after the license renewal date 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 the renewal application is made within 3 years from the date of the expiration. [2013, c. 296, §6 (AMD).]

SECTION HISTORY

1975, c. 535, (RPR). 1983, c. 413, §50 (AMD). 1991, c. 442, §7 (AMD). 1999, c. 186, §10 (AMD). 2005, c. 315, §24 (AMD). 2013, c. 296, §6 (AMD).

§1358. EXEMPTIONS FROM EXPIRATION AND RENEWAL FEES

A person holding a valid license under this chapter on the date of entering employment in the Armed Forces of the Government of the United States during a period of war or employment in any wartime service outside of the continental United States, governmental or otherwise, under the United States or any of its allied nations is exempt, for the duration of that employment, from the payment of all renewal fees, and the licensee's license remains in full force until the next regular renewal date following the termination of that employment. [2005, c. 315, §25 (AMD).]

SECTION HISTORY
1995, c. 355, §15 (AMD). 2005, c. 315, §25 (AMD).

§1359. RECIPROCITY

(REPEALED)

SECTION HISTORY
1983, c. 413, §51 (AMD). 1999, c. 186, §11 (RP).

§1360. RESIDENTS CERTIFIED ELSEWHERE

A person who is a resident of the State and has been certified in another state as an engineer-intern may be certified as an engineer-intern in this State upon payment of a fee established by the board and upon submission of evidence satisfactory to the board that certification as an engineer-intern in another state was under qualifications equivalent to those specified in this chapter for that certification. [1995, c. 355, §16 (AMD).]

SECTION HISTORY
1983, c. 413, §52 (AMD). 1995, c. 355, §16 (AMD).

§1361. RETIRED STATUS

A licensee who has terminated practice of engineering may apply to the board for retired status. Upon receiving an application for retired status, accompanied by the fee established by the board, the board shall issue a certificate of retired status to the applicant and record the applicant's name in the roster as a retired licensee, along with the date of retired status. [2005, c. 315, §26 (AMD).]

A retired licensee may retain but not use the seal and may not practice engineering. A retired licensee may apply for reinstatement to active status in accordance with section 1357 and after completing continuing education requirements according to board rules. [2013, c. 296, §7 (AMD).]

SECTION HISTORY
1995, c. 355, §17 (NEW). 2005, c. 315, §26 (AMD). 2013, c. 296, §7 (AMD).

§1362. CONTINUING PROFESSIONAL EDUCATION

1. **Requirement for renewal.** Beginning with registrations or licenses that expire in December 2005, every person seeking renewal under section 1357 must provide evidence satisfactory to the board that the person has completed 30 continuing professional education hours within the period for which the registration or license was issued.

[2005, c. 315, §27 (AMD) .]

2. **Failure to meet requirement.** The board may not renew a license of an applicant who fails to meet the continuing professional education requirements under subsection 1. If an applicant subsequently fulfills the requirement after the license has expired, the board may renew the license for the remainder of the 2-year period for which a renewal would have been valid but for the applicant's failure to meet the continuing professional education requirement.

[2005, c. 315, §27 (AMD) .]

3. **Review; monitoring.** The board shall review and monitor compliance with the continuing professional education requirement under subsection 1.

[2005, c. 315, §27 (AMD) .]

4. **Exemptions.** Notwithstanding any other provisions of this chapter, the board or a 3-person committee of the board may allow an exemption or a partial exemption of the requirements of this section to a person seeking renewal under section 1357 upon the showing of an extenuating situation, hardship or disability.

[2005, c. 315, §27 (NEW) .]

SECTION HISTORY
2003, c. 94, §1 (NEW). 2005, c. 315, §27 (AMD).

Chapter 20: FIRE SPRINKLER CONTRACTORS

§1371. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1989, c. 247, §§2, 4 (NEW).]

1. **Certificate.** "Certificate" means the document issued by the commissioner to a person indicating that the person is certified by the State as qualified to perform the job indicated in that document.

[1997, c. 728, §33 (AMD) .]

2. **Certified responsible managing supervisor.** "Certified responsible managing supervisor" means a person certified by the State as qualified to determine whether the plan and installation of fire sprinkler systems meet the standards provided by law, rule and regulation.

[1989, c. 247, §§2, 4 (NEW) .]

3. **Commissioner.** "Commissioner" means the Commissioner of Public Safety.

[1989, c. 247, §§2, 4 (NEW) .]

4. **Department.** "Department" means the Department of Public Safety.

[1989, c. 247, §§2, 4 (NEW) .]

5. **Fire sprinkler system.** "Fire sprinkler system" means an assembly of overhead piping or conduits that conveys water with or without other agents to dispersal openings or devices to extinguish, control or contain fire and to provide protection from exposure to fire or the products of combustion, planned in accordance with a national or state standard.

[1997, c. 728, §33 (AMD) .]

6. **Fire sprinkler system contractor.** "Fire sprinkler system contractor" means a person licensed by the commissioner to undertake the planning, installation or inspection of a fire sprinkler system or any part of such a system.

[1997, c. 728, §33 (AMD) .]

7. **Inspect.** "Inspect" means to visually examine a fire sprinkler system or a portion of the system to verify that it appears to be in working order and free from physical damage.

[1989, c. 247, §§2, 4 (NEW) .]

8. **Installation.** "Installation" means the initial placement of a sprinkler system or part of the system or the extension, modification or alteration of a system or part after the initial placement.

[1989, c. 247, §§2, 4 (NEW) .]

9. **License.** "License" means the document issued by the commissioner to a contractor authorizing the contractor to engage in the fire sprinkler system business in this State.

[1997, c. 728, §33 (AMD) .]

10. **Plan.** "Plan" means a shop drawing or erection plan of a fire sprinkler system or a part of the system.

[1989, c. 247, §§2, 4 (NEW) .]

11. **Planning.** "Planning" means to draw or create plans.

[1989, c. 247, §§2, 4 (NEW) .]

SECTION HISTORY
1989, c. 247, §§2,4 (NEW). 1997, c. 728, §33 (AMD).

§1372. APPLICABILITY

1. **State requirements.** The following documentation is required for persons involved in the installation of fire sprinklers.

A. Any person who undertakes planning or installation of a fire sprinkler system, or any part of the system, within this State must be licensed as a fire sprinkler system contractor. A person may not be identified as a fire sprinkler system contractor or any similar term unless licensed by the State. [1997, c. 728, §34 (AMD).]

B. Any person who undertakes the review, approval and signing required for plans prior to submission to the Department of Public Safety must be certified by the commissioner. A person may not be identified as a certified responsible managing supervisor unless certified by the State. [1997, c. 728, §34 (AMD).]

C. Any person who inspects a fire sprinkler system, other than a certified responsible managing supervisor or an agent of municipal or State Government or licensed insurer who inspects a system in performing that person's duties for that government or insurer, must be registered by the commissioner. [1997, c. 728, §34 (AMD).]

[1997, c. 728, §34 (AMD) .]

2. **Posting of licenses, certificates and registrations.** Each license, certificate and registration issued under this chapter must be posted in a conspicuous place in the place of business of the person to whom it is issued. A license, certificate or registration is not transferable.

[1997, c. 728, §34 (AMD) .]

3. **Municipal licenses.** A municipality may not require fire sprinkler system contractors to be municipally licensed nor may any municipality issue a permit for any fire sprinkler system unless satisfied that the person applying for the permit complies with this chapter.

[1997, c. 728, §34 (AMD) .]

SECTION HISTORY
1989, c. 247, §§2,4 (NEW). 1997, c. 728, §34 (AMD).

§1373. RENEWAL

The commissioner shall adopt rules governing the period of licensure and certification and conditions of renewal. [1989, c. 247, §§2, 4 (NEW).]

SECTION HISTORY
1989, c. 247, §§2,4 (NEW).

§1374. FEES

The commissioner shall set fees for licensure, certification and registration which shall be just sufficient to cover the costs of implementing this chapter. A person licensed as a fire sprinkler system contractor who wishes to be certified as a responsible managing supervisor shall not be required to pay a fee for that certification. A person certified as a professional engineer by the State shall not be required to pay a fee for either being licensed as a fire sprinkler system contractor or being certified as a responsible managing supervisor. [1989, c. 247, §§2, 4 (NEW).]

All fees received by the department shall be paid to the State Treasurer and shall be used for carrying out this chapter. Any balance of these fees shall not lapse but shall be carried forward as a continuing account to be expended for the same purposes in the following fiscal years. [1989, c. 247, §§2, 4 (NEW).]

SECTION HISTORY
1989, c. 247, §§2,4 (NEW).

§1375. QUALIFICATIONS

1. **Fire sprinkler system contractor.** The commissioner shall issue a fire sprinkler system contractor license to any person who retains, either by employment or contract, at least one certified responsible managing supervisor. A certified responsible managing supervisor may also be a fire sprinkler system contractor.

[1997, c. 728, §35 (AMD) .]

2. **Certification of responsible managing supervisor.** The commissioner shall issue a responsible managing supervisor certificate to any person who:

A. Is certified by the National Institute for the Certification in Engineering Technologies at Level III for fire protection automatic sprinkler systems layout; [1989, c. 247, §§2, 4 (NEW).]

B. Is licensed by the State as a professional engineer and has 5 years experience in the field of fire protection, mechanical, piping or related engineering fields; or [1989, c. 247, §§2, 4 (NEW).]

C. If applying prior to July 1, 1995, has 5 years prior experience in the planning or installation of fire sprinkler systems in the United States if the applicant provides a sworn statement of reference from 3 individuals as to the applicant's experience and is approved by the Fire Sprinkler Advisory Council created in section 1381. [1989, c. 247, §§2, 4 (NEW).]

[1997, c. 728, §35 (AMD) .]

3. **Inspection technician.** The commissioner shall issue an inspection technician registration to any person who demonstrates an understanding of fire sprinkler system planning, installation and maintenance sufficient to determine whether a fire sprinkler system is in proper operating condition.

[1997, c. 728, §35 (AMD) .]

SECTION HISTORY
1989, c. 247, §§2,4 (NEW). 1997, c. 728, §35 (AMD).

§1376. TERMINATION OF EMPLOYMENT OR AGREEMENT

Within 10 days after terminating employment or a contractual agreement with a licensed fire sprinkler system contractor the certified responsible managing supervisor involved shall notify the commissioner of that fact. [1997, c. 728, §36 (AMD).]

SECTION HISTORY
1989, c. 247, §§2,4 (NEW). 1997, c. 728, §36 (AMD).

§1377. PLAN REVIEW

Prior to construction of any fire sprinkler system, or prior to an addition involving more than 20 new sprinkler heads to a fire sprinkler system, regulated by the National Fire Protection Association, Pamphlet No. 13, as amended, a fire sprinkler system contractor shall obtain a permit from the commissioner who shall review the plan for construction or addition and charge a reasonable fee for the review and permitting process. All plans to be submitted by a contractor to the Department of Public Safety must be reviewed, approved and signed by the certified responsible managing supervisor retained by the contractor. [1997, c. 728, §36 (AMD).]

All plans for construction of or alteration to fire sprinkler systems must prominently display the fire sprinkler system contractor's license number, as well as the responsible managing supervisor's certification number and the name and address of the person to install the fire sprinkler system. Each permit issued must be displayed prominently at the site of construction. Within 30 days of the completion of a new fire sprinkler system or an addition to an existing fire sprinkler system, a fire sprinkler system contractor shall provide to the commissioner a copy of the permit signed by the certified responsible managing supervisor representing that the fire sprinkler system has been installed according to specifications of the approved plan to the best of the supervisor's knowledge, information and belief. [1997, c. 728, §36 (AMD).]

SECTION HISTORY
1989, c. 247, §§2,4 (NEW). 1997, c. 728, §36 (AMD).

§1378. EMPLOYEES

The commissioner may appoint, subject to the Civil Service Law, such employees as may be necessary to carry out this chapter. Any person so employed is under the administrative and supervisory direction of the commissioner. [1997, c. 728, §36 (AMD).]

SECTION HISTORY
1989, c. 247, §§2,4 (NEW). 1997, c. 728, §36 (AMD).

§1379. INVESTIGATION OF COMPLAINTS; REVOCATION OF LICENSE

The commissioner shall investigate or cause to be investigated all complaints made to the commissioner and all cases of noncompliance with or violation of this chapter. The commissioner may suspend or revoke a license, certification or registration pursuant to Title 5, section 10004. The commissioner may refuse to issue or renew a license, certification or registration or the District Court may suspend, revoke or refuse to renew the license, certification or registration of a person who is found guilty of: [1989, c. 247, §§2, 4 (NEW); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF).]

1. **Fraud or deceit.** The practice of any fraud or deceit in obtaining a license, certification or registration;

[1989, c. 247, §§2, 4 (NEW) .]

2. **Negligence or misconduct.** Any negligence, incompetency or misconduct in the planning, installation or inspection of a fire sprinkler system. Continued failure to conform to standards or rules adopted by the department shall be prima facie evidence of negligence or incompetency;

[1989, c. 247, §§2, 4 (NEW) .]

3. **Violation of law.** Any violation of this chapter or any rule adopted by the department; or

[1989, c. 247, §§2, 4 (NEW) .]

4. **Conviction of crime.** Subject to the limitations of Title 5, chapter 341, a crime which involves dishonesty or false statement or which relates directly to the practice of fire sprinkler system planning, installation, inspection or any crime for which incarceration for one year or more may be imposed.

[1989, c. 247, §§2, 4 (NEW) .]

The commissioner, for reasons the commissioner may deem sufficient, may reissue a license, certification or registration to any person whose license, certification or registration has been revoked. [1989, c. 247, §§2, 4 (NEW).]

SECTION HISTORY
1989, c. 247, §§2,4 (NEW). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF).

§1380. PENALTIES; INJUNCTION

1. **Penalties.** Any person who plans, installs or inspects a fire sprinkler system, or any part of that system, without obtaining the required license, certification or registration, or after the license, certification or registration has expired or has been suspended or revoked or temporarily suspended or revoked, or who installs or alters a system without obtaining a permit as required by this chapter is guilty of a Class E crime.

[1989, c. 247, §§2, 4 (NEW) .]

2. **Injunction.** The State may bring an action in Superior Court to enjoin any person from violating this chapter, regardless of whether proceedings have or may be instituted in District Court or whether criminal proceedings have been or may be instituted.

[1989, c. 247, §§2, 4 (NEW); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

SECTION HISTORY
1989, c. 247, §§2,4 (NEW). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF).

§1381. FIRE SPRINKLER ADVISORY COUNCIL

(REPEALED)

SECTION HISTORY
1989, c. 247, §§2,4 (NEW). 1989, c. 878, §B26 (AMD). 1991, c. 622, §S31 (RP).

§1382. DEPARTMENT RULES

Following the procedures of Title 5, chapter 375, the commissioner shall adopt such rules as are necessary for the implementation of this chapter. [1989, c. 247, §§2, 4 (NEW).]

SECTION HISTORY
1989, c. 247, §§2,4 (NEW).

Chapter 21: FUNERAL DIRECTORS AND EMBALMERS

Subchapter 1: GENERAL PROVISIONS

§1400. DEFINITIONS

When used in this chapter, unless the context otherwise requires, the following words shall have the following meanings: [1967, c. 253, §1 (NEW).]

1. **Advertisement.** "Advertisement" means the publication, dissemination, circulation or placing before the public, or causing directly or indirectly to be made, published, disseminated or placed before the public any announcement or statement in a newspaper, magazine or other publication, or in the form of a book, notice, circular, pamphlet, letter, handbill, poster, bill, sign, placard, card, label or tag, or over any radio or television station.

[1967, c. 253, §1 (NEW) .]

1-A. **Board.** "Board" means the State Board of Funeral Service.

[1983, c. 468, §3 (NEW) .]

2. **Burial.** "Burial" includes interment in any form or cremation and the transportation of the human remains necessary therefor.

[1967, c. 253, §1 (NEW); 1997, c. 210, §40 (AMD) .]

2-A. **Commissioner.** "Commissioner" means the Commissioner of Professional and Financial Regulation.

[1989, c. 450, §12 (AMD) .]

3. **Funeral establishment.** "Funeral establishment" means every place or 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.

[2001, c. 169, §1 (AMD) .]

4. **Funeral service profession.** "Funeral service profession" means the aggregate of all funeral service licensees and their duties and responsibilities in connection with the funeral as an organized, purposeful, time limited, flexible, group centered response to death.

[1967, c. 253, §1 (NEW) .]

5. **Practice of funeral service.** "Practice of funeral service" means the engagement of a person 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 the practice of funeral directing or embalming as presently known, whether under these titles or designations or otherwise. "Practice of funeral service" also means making arrangements for funeral services or selling funeral supplies to the public or 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.

A license for the practice of funeral service as used in this chapter is the license given to a person who is engaged in the practice of funeral service as above defined.

[2001, c. 169, §2 (AMD) .]

6. **Practitioner trainee.** "Practitioner trainee" means a person who is engaged in preparing to become licensed for the practice of funeral service under the personal supervision and instruction of a person duly licensed for the practice of funeral service, and who is duly registered as such and approved by the board.

[1983, c. 468, §4 (AMD) .]

SECTION HISTORY
1967, c. 253, §1 (NEW). 1971, c. 326, §1 (AMD). 1981, c. 703, §A44 (AMD). 1983, c. 468, §§3,4 (AMD). 1989, c. 450, §12 (AMD). 1997, c. 210, §40 (AMD). 2001, c. 169, §§1,2 (AMD).

§1401. PREARRANGED FUNERALS OR BURIAL PLANS

1. **Plan requirements.** Except as provided in subsection 1-A, any prearranged funeral or burial plan contracted or undertaken within this State must comply with the following.

A. All money paid during a person's lifetime to any individual, firm, association, partnership or corporation, by that person or by someone on behalf of that person, under an agreement that services will be performed or personal property will be delivered in connection with the disposition of that person's body after death must be deposited by the payee within 10 days after receipt of the money in a separate account in a financial institution or credit union authorized to do business in this State, as defined in Title 9-B, section 131, subsections 12-A and 17-A, in the name of the payee as mortuary trustee for the person for whose benefit the payment was made and must be held in that account together with interest if any. If money is paid by check, share draft or money order, the payee shall instruct the payor to make the instrument payable to the financial institution or credit union into which it is to be deposited and to include on the instrument the name of the mortuary trustee and the person for whose benefit the payment was made. [1999, c. 590, §1 (AMD).]

B. The payee shall deposit the money in either a federally insured deposit or share account or a trust account; the type of account must be disclosed to the payor or the payor's representative and a deposit in a trust account may be invested in or used to purchase only the following:

(1) Federally insured deposit or share accounts;

(2) Securities issued, insured or guaranteed by the United States or by any agency or corporate or other instrumentality of the United States;

(3) Municipal securities that are exempt from registration under Title 32, section 16201, subsection 1; and

(4) Permanent life insurance, other than variable life insurance and annuities, from an insurer authorized to transact insurance in this State, subject to the provisions of Title 24-A, chapter 27. A payee or mortuary trustee may not receive any commission, fee or other consideration from an insurer in connection with the procurement or purchase of insurance permitted by this subparagraph.

Except for fees allowed by this section, all investments made with trust assets remain trust assets. [2005, c. 65, Pt. C, §16 (AMD).]

C. Within 30 days after the deposit of funds by the payee, the financial institution or credit union shall provide a written confirmation of the deposit, including the amount deposited, to the payor or the payor's legal representative. Nothing in this section may be construed to prevent the direct transfer of these funds to another financial institution or credit union by payee transfer, by financial institution or credit union

merger or consolidation or by operation of law, provided that within 30 days after the direct transfer of the funds, the recipient financial institution or credit union shall provide a written confirmation of the deposit, including the amount deposited, to the payor or the payor's legal representative. [1999, c. 590, §1 (AMD).]

D. The agreement must be in writing and a copy must be furnished to the payor or the payor's legal representative by the payee when the agreement is executed. The agreement may be revocable or irrevocable; however, if irrevocable, there must be a provision to allow for the transfer of the account by the appointment of successor trustees. The agreement must clearly state the name of the initial financial institution or credit union into which the money will be deposited and must direct the payor to send a copy of the agreement to the named financial institution or credit union. The agreement must clearly state terms providing for disposition of excess funds after funeral goods and services have been provided. The agreement must clearly state any fees that may be charged against the account; fees must be reasonable, as defined by the board, and may be charged only:

(1) Upon transfer of the account by the appointment of a successor trustee;

(2) Upon revocation of the agreement if the agreement is revocable; and

(3) For the actual financial and tax administration of the account.

The payee shall maintain a complete record of the deposit of all funds, including principal and interest. The record must be available for inspection by the payor, the payor's legal representative, the commissioner's designee or an inspector for the board and must contain the name and address of the financial institution or credit union currently in possession of the funds and the dates and amounts of deposits. [2007, c. 402, Pt. J, §1 (AMD).]

E. The funds may be directed by the payee to another financial institution or credit union or directed back to the payor or the payor's legal representative, if otherwise lawful and permitted by contract, on written instructions of the payor or the payor's legal representative. The funds may only be withdrawn by the payee on presentation of a certified copy of the death certificate of the person for whose benefit the funds were paid, in which event they must be used in accordance with the agreement. [1999, c. 590, §1 (AMD).]

[2007, c. 402, Pt. J, §1 (AMD) .]

1-A. **Plan funded with proceeds of life insurance policy.** A prearranged funeral or burial plan agreement may be funded with proceeds of a life insurance policy in accordance with this subsection.

A. During a person's lifetime, a person or that person's legal representative may enter into an agreement that services will be performed or personal property will be delivered in connection with the disposition of that person's body after death by:

(1) Assigning the mortuary trustee as owner and beneficiary of a life insurance policy payable to the mortuary trustee upon that person's death; or

(2) Designating the mortuary trustee as a beneficiary of a life insurance policy payable to the mortuary trustee upon that person's death. [2003, c. 109, §3 (NEW).]

B. An agreement under paragraph A must be in writing and a copy must be furnished to the person or the person's legal representative by the mortuary trustee when the agreement is executed. The agreement may be revocable or irrevocable; however, if the agreement is irrevocable, there must be a provision to allow for the transfer of the trust account by the appointment of successor trustees. The agreement must clearly state terms providing for disposition of excess funds after funeral goods and services have been provided. The agreement must clearly state any fees that may be charged against the trust account. Fees must be reasonable, as defined by the board, and may be charged only:

(1) Upon transfer of a trust account by the appointment of a successor trustee;

(2) Upon revocation of the agreement if the agreement is revocable; and

(3) For the actual financial and tax administration of the trust account. [2003, c. 109, §3 (NEW).]

C. The mortuary trustee shall maintain a complete record of a trust account established under this subsection. The record must be available for inspection by the person, the person's legal representative, the commissioner's designee or an inspector for the board. [2003, c. 109, §3 (NEW).]

This subsection may not be construed to alter the terms of a life insurance policy or supersede any law governing the regulation of life insurance policies.

[2003, c. 109, §3 (NEW) .]

2. **Rulemaking.** The board shall adopt rules regarding prearranged funeral agreements, including, but not limited to:

A. The form, format and content of trust agreements; [1999, c. 258, §2 (NEW); 1999, c. 258, §3 (AFF).]

B. Standards regarding when service contracts are required in conjunction with trust agreements and the form, format and content of the service contracts; [1999, c. 258, §2 (NEW); 1999, c. 258, §3 (AFF).]

C. The establishment of reasonable fees that may be charged only pursuant to subsection 1, paragraph D; and [1999, c. 258, §2 (NEW); 1999, c. 258, §3 (AFF).]

D. Inspection of trust agreements, account information and any related documentation. [1999, c. 258, §2 (NEW); 1999, c. 258, §3 (AFF).]

Rules adopted pursuant to this section are routine technical rules under the Maine Revised Statutes, Title 5, chapter 375, subchapter II-A.

[1999, c. 258, §2 (NEW); 1999, c. 258, §3 (AFF) .]

3. **Financial institution or credit union liability.** The financial institution or credit union is discharged from liability for direct payment of the funds in an account under subsection 1 to another financial institution or credit union or to the payor, upon presentation of a written consent to withdrawal signed by the payor or the payor's legal representative and by the payee or upon withdrawal of the funds by the payee upon presentation of a certified copy of the death certificate of the person for whose benefit the funds were paid.

[1999, c. 590, §2 (AMD) .]

4. **Applicability.** This section does not apply to the sale of cemetery lots, crypts, niches, cemetery burial privileges, cemetery space or perpetual care.

[1999, c. 258, §2 (NEW); 1999, c. 258, §3 (AFF) .]

5. **Cotrustees.** This section may not be construed as prohibiting any person, including a payor, from serving as a mortuary cotrustee with the payee.

[1999, c. 258, §2 (NEW); 1999, c. 258, §3 (AFF) .]

6. **Penalties.** Any person who violates this section is guilty of a Class E crime. This section does not preclude prosecution or conviction under other applicable laws, including, but not limited to, disciplinary actions under this chapter.

[1999, c. 258, §2 (NEW); 1999, c. 258, §3 (AFF) .]

SECTION HISTORY

1983, c. 413, §§53,54 (AMD). 1983, c. 816, §C1 (AMD). 1985, c. 240, (AMD). 1989, c. 450, §13 (AMD). 1989, c. 674, (AMD). 1999, c. 258, §3 (AFF). 1999, c. 258, §2 (RPR). 1999, c. 590, §§1,2 (AMD). 2003, c. 109, §§2,3 (AMD). 2005, c. 65, §C16 (AMD). 2007, c. 402, Pt. J, §1 (AMD).

§1402. SOLICITATION OF PREARRANGED FUNERALS AND FUNERAL BUSINESS PROHIBITED

No funeral home, funeral establishment or person holding a license under this chapter shall as, or through, an agent or principal solicit a prearranged funeral service or plan for any person or persons. "Prearranged funeral service or plan" shall mean any funeral service or plan which is arranged, planned or determined prior to the demise of a person or persons for whom the funeral service is to be performed. Funeral homes, funeral establishments and licensees under this chapter may enter into contracts or agreements for prearranged funeral services or plans provided that they do not in any manner either as, or through, principals or agents solicit such contract or agreement.

No funeral home, funeral establishment or person licensed under this chapter shall pay or cause to be paid, directly or indirectly, any money or other thing of value to a person not responsible for payment for the funeral as a commission or gratuity for the securing of business for such funeral home, establishment or licensee.

Any person who violates this section is guilty of a Class E crime. [1983, c. 413, §55 (RPR).]

SECTION HISTORY
1983, c. 413, §55 (AMD).

§1403. EMPLOYMENT OF FUNERAL DIRECTORS, EMBALMERS OR PRACTITIONERS OF FUNERAL SERVICES BY CEMETERIES PROHIBITED

No funeral home, funeral establishment or person holding a license under this chapter may be employed as a funeral home, funeral establishment, or as an embalmer or funeral director or practitioner of funeral services by a cemetery, cemetery association or cemetery corporation, nor shall such person be so employed by a funeral home, funeral establishment or mortuary establishment which owns or controls or is owned or controlled by a cemetery, cemetery association or cemetery corporation. Control shall not be considered to exist because the owners, officers or employees of a funeral home, funeral establishment or mortuary establishment serve without pay or for a fee not exceeding $500 per year per person as officers or as the minority of the directors or trustees of a cemetery association or cemetery corporation in which they have no financial investment. This section does not prevent employment of persons licensed under this chapter by cemeteries, cemetery associations or cemetery corporations in other capacities than that of funeral director or embalmer or practitioner of funeral services. This section does not apply to disinterments or transfers of disinterred bodies. [1989, c. 450, §14 (AMD).]

Any person who violates this section is guilty of a Class E crime. [1983, c. 413, §56 (RPR).]

SECTION HISTORY
1983, c. 413, §56 (AMD). 1989, c. 450, §14 (AMD).

§1404. MEDICAL EXAMINER CASE; NO EMBALMING UNTIL RELEASE

When a person has died under circumstances which constitute a medical examiner case as defined in Title 22, section 3025, no person may inject into any cavity or artery of the body any fluid or substance, or submerge the body in or place, pour or spray on the body any preservative, deodorant, insecticide, cosmetic or other chemical until a legal certificate as to the cause of death has been obtained from the medical examiner, or until permission to do so has been given by the medical examiner. [1985, c. 611, §10 (AMD).]

SECTION HISTORY
1979, c. 538, §11 (AMD). 1985, c. 611, §10 (AMD).

§1404-A. NO EMBALMING WHEN AUTOPSY AUTHORIZED

The next of kin or legal representative of a person who has died may authorize an autopsy. If an autopsy is authorized, no person shall inject into or remove from any artery, vein, or cavity of the body of the person who has died any fluid, gas or other substance except by or with the permission of a pathologist, medical examiner or licensed physician in attendance. [1975, c. 677, (NEW).]

On completion of the autopsy, the body shall be released for normal handling. [1975, c. 677, (NEW).]

The provisions of this section do not apply to deaths within the jurisdiction of medical examiners or autopsies as authorized in Title 22, chapter 711. [1975, c. 677, (NEW).]

A violation of this section is a Class E crime. [1975, c. 677, (NEW).]

SECTION HISTORY
1975, c. 677, (NEW).

§1405. CREMATION

A person, firm or corporation within the State, after obtaining a license from and paying a license fee to the Department of Health and Human Services may establish and maintain suitable buildings and appliances for the cremation of bodies of the dead and, subject to the rules of the department, may cremate such bodies and dispose of the ashes of the same. The department shall adopt rules to implement this section. Rules adopted pursuant to this section are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A. [2007, c. 225, §1 (AMD).]

The body of a deceased person may not be cremated within 48 hours after death unless the person died of a contagious or infectious disease, and in no event may the body of a deceased person be cremated, buried at sea, used by medical science or removed from the State until the person, firm or corporation in charge of the disposition has received a certificate from a duly appointed medical examiner that the medical examiner has made personal inquiry into the cause and manner of death and is satisfied that further examination or judicial inquiry concerning the cause and manner of death is not necessary. This certificate, a certified copy of the death certificate and a burial transit permit when presented by the authorized person as defined in Title 22, section 2846 is sufficient authority for cremation, burial at sea, use by medical science or removal from the State, and the person, firm or corporation in charge of the disposition may not refuse to cremate or otherwise dispose of the body solely because these documents are presented by such an authorized person. The certificate must be retained by the person, firm or corporation in charge of the cremation or disposition for a period of 15 years. For the certificate, the medical examiner must receive a fee of $15 payable by the person requesting the certificate. [2007, c. 225, §1 (AMD).]

Human remains may not be removed, transported or shipped to a crematory unless encased in a casket or other suitable container. [2007, c. 225, §1 (AMD).]

SECTION HISTORY

1971, c. 56, (AMD). 1975, c. 293, §4 (AMD). 1977, c. 232, §5 (AMD). 1979, c. 538, §§12,13 (AMD). 1985, c. 611, §§11,12 (AMD). 1997, c. 210, §40 (AMD). 2003, c. 689, §B6 (REV). 2007, c. 225, §1 (AMD).

§1405-A. DISPOSITION OF CREMATED REMAINS

A funeral director or a practitioner of funeral services who receives cremated remains or has received cremated remains prior to the effective date of this section may dispose of those cremated remains in accordance with Title 13, section 1032, providing the following conditions have been met: [2009, c. 39, §1 (AMD).]

1. **Cremated remains not claimed for one year.** The cremated remains have not been claimed after a time period of at least one year from the time of cremation; and

[2009, c. 39, §1 (AMD) .]

2. **Notice.** The funeral director or practitioner of funeral services has sent notice by certified mail, return receipt requested, to the last known address of the person who authorized the cremation at least 60 days prior to disposal.

[2001, c. 611, §1 (NEW) .]

SECTION HISTORY
2001, c. 611, §1 (NEW). 2009, c. 39, §1 (AMD).

§1406. GRAVE MARKERS

Any funeral establishment or person licensed under this chapter, when selling a grave marker to a consumer before the completion of the funeral of the person whose grave is to be marked, shall adhere to the sale requirements for funeral goods and services set forth in the Federal Trade Commission's Funeral Industry Practices Rule, 16 Code of Federal Regulations, Part 453. Violation of this section is an unfair trade practice in violation of Title 5, section 207. [1989, c. 391, (NEW).]

SECTION HISTORY
1989, c. 391, (NEW).

§1407. DISCLOSURE OF FUNERAL ESTABLISHMENT OWNERSHIP; RENTAL CASKETS

1. **Ownership information.** A funeral establishment shall disclose the name and address of each person holding an ownership interest in the funeral establishment on each contract or agreement for provision of funeral services or supplies and on any document required by federal law.

[1999, c. 282, §1 (NEW) .]

2. **Rental caskets.** A funeral establishment shall disclose on its general price list and casket price list either that the funeral establishment offers rental caskets and the cost of rental or that the funeral establishment does not offer rental caskets.

[1999, c. 282, §1 (NEW) .]

3. **Federal Trade Commission regulations.** The disclosures required under this section supplement the disclosures required by the Federal Trade Commission pursuant to its regulations governing the funeral industry.

[1999, c. 282, §1 (NEW) .]

SECTION HISTORY
1999, c. 282, §1 (NEW).

Subchapter 2: BOARD OF FUNERAL SERVICES

§1451. BOARD; POWERS AND DUTIES

The State Board of Funeral Service, as established by Title 5, section 12004-A, subsection 18, consists of 7 members, 5 of whom must be persons licensed for the practice of funeral service for 10 consecutive years or who have had 10 consecutive years' experience as a practitioner of funeral service in this State immediately preceding their appointment and 2 of whom must be public members as defined in Title 5, section 12004-A. Members are appointed by the Governor for a term of 4 years. A national organization of retired persons may submit a list of applicants to the Governor for use in the selection process of one of the public members. Appointments of members must comply with Title 10, section 8009. A board member may be removed by the Governor for cause. [2013, c. 217, Pt. D, §1 (AMD).]

The board may adopt rules consistent with law governing the practice of funeral service, including but not limited to licensing of practitioner trainees, practitioners of funeral service, funeral directors, embalmers, funeral attendants, funeral home establishments and branches. These rules do not become effective unless adopted in conformity with Title 5, chapter 375, subchapter 2. [2007, c. 402, Pt. J, §2 (AMD).]

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. [2013, c. 246, Pt. B, §7 (AMD).]

The board shall issue all notices and licenses and may cause inspections to be made of all establishments or places of business of any person engaged in the profession of funeral service in the State, which may include the investigation of complaints or suspected violation of this chapter and the rules adopted by the board. The inspection may also be for the purpose of determining that these establishments and places are maintained in a clean and sanitary manner and that suitable equipment for their proper conduct is maintained and that the laws and the rules of the board relating to the conduct of these establishments are observed. The inspection may include a review of the financial records to determine compliance with the laws and rules of the board governing prearranged funeral services or plans. The inspection may be made by members of the board upon authorization by the board or by professional technical staff. [2007, c. 402, Pt. J, §2 (AMD).]

The board may enter into reciprocal agreements with corresponding boards of other states for the purpose of allowing the practitioners of funeral services to perform their licensed functions in this or other states under such terms and conditions as the boards may prescribe. [1983, c. 413, §57 (NEW).]

SECTION HISTORY
1967, c. 253, §2 (RPR). 1971, c. 326, §2 (AMD). 1975, c. 293, §4 (AMD). 1975, c. 575, §20 (AMD). 1975, c. 771, §343 (AMD). 1977, c. 694, §566 (AMD). 1981, c. 703, §A45 (AMD). 1983, c. 413, §57 (RPR). 1983, c. 553, §30 (AMD). 1983, c. 812, §206 (AMD). 1989, c. 450, §§15,16 (AMD). 1989, c. 503, §B127 (AMD). 1989, c. 878, §B27 (AMD). 1993, c. 600, §A105 (AMD). 1995, c. 397, §§31,32 (AMD). 1999, c. 91, §1 (AMD). 1999, c. 91, §2 (AFF). 2001, c. 169, §3 (AMD). 2001, c. 505, §1 (AMD). 2007, c. 402, Pt. J, §2 (AMD). 2013, c. 217, Pt. D, §1 (AMD). 2013, c. 246, Pt. B, §7 (AMD).

§1451-A. HEARINGS

(REPEALED)

SECTION HISTORY
1983, c. 413, §58 (NEW). 2007, c. 402, Pt. J, §3 (RP).

§1452. RECORDS AND REPORTS

(REPEALED)

SECTION HISTORY
1981, c. 703, §A46 (AMD). 1983, c. 553, §31 (AMD). 2007, c. 402, Pt. J, §4 (RP).

§1452-A. LIAISON; LIMITATIONS

(REPEALED)

SECTION HISTORY
1977, c. 604, §16 (NEW). 2007, c. 402, Pt. J, §5 (RP).

§1452-B. BUDGET

(REPEALED)

SECTION HISTORY
1977, c. 604, §16 (NEW). 1981, c. 703, §A47 (AMD). 1995, c. 397, §33 (RP).

§1453. APPLICATION OF MONEYS COLLECTED

(REPEALED)

SECTION HISTORY
1967, c. 253, §3 (AMD). 1995, c. 397, §34 (RP).

§1454. LISTS FOR TRANSPORTATION COMPANIES

(REPEALED)

SECTION HISTORY
1967, c. 253, §4 (AMD). 1983, c. 553, §32 (AMD). 1989, c. 450, §17 (RP).

§1455. INVESTIGATIONS; REFUSAL OF LICENSE OR RENEWAL

(REPEALED)

SECTION HISTORY
1967, c. 253, §5 (AMD). 1969, c. 285, §1 (AMD). 1973, c. 303, §3 (AMD). 1977, c. 694, §567 (AMD). 1983, c. 413, §59 (RP).

§1455-A. INVESTIGATIONS; REFUSAL OF LICENSE OR RENEWAL

(REPEALED)

SECTION HISTORY

1983, c. 413, §60 (NEW). 1989, c. 450, §§18-21 (AMD). 1997, c. 210, §40 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 402, Pt. J, §6 (RP).

§1455-B. DENIAL OR REFUSAL TO RENEW LICENSE; DISCIPLINARY ACTION

In addition to the grounds enumerated in Title 10, section 8003, subsection 5-A, paragraph A, the board may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A for: [2007, c. 402, Pt. J, §7 (NEW).]

1. **False advertising.** False or misleading advertising as a practitioner of funeral service, funeral director or embalmer; advertising or using the name of a person in connection with that of any funeral establishment who is not licensed as a practitioner of funeral service, funeral director or embalmer;

[2007, c. 402, Pt. J, §7 (NEW) .]

2. **Unauthorized solicitation of human remains.** Solicitation of human remains by the licensee, or the licensee's agents, assistants or employees, whether that solicitation occurs after death or while death is impending. Nothing in this subsection may be construed to prohibit general advertising.

[2007, c. 402, Pt. J, §7 (NEW) .]

3. **Unauthorized employment.** Employment by the licensee of persons known as "cappers," "steerers," "solicitors" or other such persons to obtain the services of a licensee or one engaged in the practice of funeral service;

[2007, c. 402, Pt. J, §7 (NEW) .]

4. **Unauthorized solicitation of human remains.** Employment, directly or indirectly, of a practitioner trainee, agent, assistant, embalmer, employee or other person, on part or full time, or on commission, for the purpose of calling upon individuals or institutions by whose influence human remains may be turned over to a particular funeral establishment;

[2007, c. 402, Pt. J, §7 (NEW) .]

5. **Unauthorized commission to secure business.** The direct or indirect payment or offer of payment of a commission by the licensee or the licensee's agents, assistants or employees for the purpose of securing business;

[2007, c. 402, Pt. J, §7 (NEW) .]

6. **Unauthorized commission; crematory, mausoleum or cemetery.** Solicitation or acceptance by a licensee of any commission, bonus or rebate in consideration of recommending or causing human remains to be disposed of in any crematory, mausoleum or cemetery;

[2007, c. 402, Pt. J, §7 (NEW) .]

7. **Refusal to surrender human remains.** Refusing to promptly surrender the custody of human remains, upon the express order of the person lawfully entitled to the custody thereof;

[2007, c. 402, Pt. J, §7 (NEW) .]

8. **Negligent filings.** Negligent, careless or willful noncompliance with the laws relating to filing death certificates and obtaining burial permits; or

[2007, c. 402, Pt. J, §7 (NEW) .]

9. **Abusive or disrespectful handling of human remains.** Abuse or disrespect in the handling of human remains, or violation of any law or ordinance affecting the handling, custody, care or transportation of human remains.

[2007, c. 402, Pt. J, §7 (NEW) .]

Whoever violates any provision of this chapter or any rule prescribed by the board for the preparation, embalming, transportation or burial of any human remains commits a Class E crime. [2007, c. 402, Pt. J, §7 (NEW).]

SECTION HISTORY
2007, c. 402, Pt. J, §7 (NEW).

Subchapter 3: LICENSES

§1501. LICENSES; QUALIFICATIONS; REQUIREMENTS

The State Board of Funeral Service may determine the qualifications necessary to enable any person to lawfully engage in the funeral service profession and operate a funeral establishment. The board shall examine all applicants for licenses for the practice of funeral service and shall issue a license to all persons who successfully pass that examination and pay the fee as set under section 1504. To be licensed for the practice of funeral service under this chapter, a person must be at least 18 years of age, a resident of this State, have successfully completed a prescribed course at a school or schools approved by the State Board of Funeral Service and must have served as a practitioner trainee for not less than 12 months under the personal supervision of a person licensed for the practice of funeral service and approved by the board. Each applicant shall demonstrate trustworthiness and competency to engage in the profession of funeral service in such a manner as to safeguard the interests of the public. [2007, c. 402, Pt. J, §8 (AMD).]

Each applicant for licensure as a practitioner of funeral service, funeral director or embalmer must be examined on the courses as outlined in the board's rules. [2007, c. 402, Pt. J, §9 (AMD).]

All funeral establishments and branches must be operated by a person or persons holding a funeral director's license, which was initially issued before January 1, 1989, or a practitioner of funeral service license. That license must be displayed at or in any such establishment or branch. [1989, c. 450, §22 (NEW).]

A funeral establishment, in which the preparation of dead bodies takes place, must contain a preparation room equipped with tile, cement or composition floor, necessary drainage or proper disposal of waste satisfactory to the local health officer, ventilation and necessary instruments and supplies for the preparation and embalming of dead human bodies for burial, transportation or other disposition. [1989, c. 450, §22 (AMD).]

The board may adopt such rules and classifications as may be reasonable, sufficient and proper to define what shall be deemed the proper drainage and ventilation and what instruments are necessary and suitable in a funeral establishment. [1989, c. 450, §22 (AMD).]

The board may adopt rules governing its own procedure. It may adopt rules consistent with the law governing the time, place, method and grading of examinations. Written examinations shall be retained for a period of 5 years, but need not be retained for a longer period. The board may waive all or part of the licensing requirements and qualifications of this chapter if in its judgment these requirements and qualifications are in conflict with the religious faith of an applicant. [1989, c. 450, §22 (AMD).]

SECTION HISTORY

1967, c. 253, §6 (RPR). 1969, c. 285, §2 (AMD). 1969, c. 433, §80 (AMD). 1971, c. 326, §3 (AMD). 1971, c. 598, §70 (AMD). 1977, c. 239, (AMD). 1983, c. 413, §61 (AMD). 1983, c. 468, §§5,6 (AMD). 1983, c. 816, §A32 (AMD). 1989, c. 450, §22 (AMD). 2007, c. 402, Pt. J, §§8, 9 (AMD).

§1501-A. PRIOR LICENSEES

(REPEALED)

SECTION HISTORY
1969, c. 285, §3 (NEW). 1983, c. 413, §62 (RP).

§1502. EXAMINATIONS; REVOCATION OF LICENSES

(REPEALED)

SECTION HISTORY
1965, c. 360, §1 (AMD). 1967, c. 253, §7 (RP).

§1503. BLANKS AND FORMS OF PROCEDURE; LISTS OF LICENSEES AND EXAMINATIONS

(REPEALED)

SECTION HISTORY
1965, c. 360, §2 (AMD). 1967, c. 253, §8 (AMD). 1975, c. 293, §4 (AMD). 1981, c. 703, §A48 (AMD). 1983, c. 553, §33 (AMD). 2007, c. 402, Pt. J, §10 (RP).

§1503-A. PRACTITIONER TRAINEE

In order for any person to receive credit for time served as a practitioner trainee, that person must have served 2,000 hours of employment with a funeral establishment approved by the State Board of Funeral Service under the instruction and supervision of a person licensed for the practice of funeral service and actively engaged in that practice, and must be licensed as a practitioner trainee with the board. Upon terminating employment, the practitioner trainee shall notify the board immediately, giving the date of termination. The practitioner trainee must repeat this procedure with all subsequent employers accurately showing the dates of beginning and of terminating apprenticeship employment. Before a funeral service license may be issued, the practitioner trainee must file with the board a certification of the trainee time served, signed by the practitioner trainee's employer or employers, before a notary public. Practitioner trainee requirements are satisfied in the case of an applicant who presents proof of present licensure as a practitioner of funeral service in another state at the time application is made for licensure as a practitioner of funeral service in this State. [2007, c. 402, Pt. J, §11 (AMD).]

SECTION HISTORY
1967, c. 253, §9 (NEW). 1969, c. 285, §4 (AMD). 1983, c. 468, §7 (AMD). 1989, c. 450, §23 (AMD). 2007, c. 402, Pt. J, §11 (AMD).

§1504. FEES; EXPIRATION AND RENEWAL OF LICENSES

The Director of the Office of Professional and Occupational Regulation within the Department of Professional and Financial Regulation may establish by rule fees for purposes authorized under this chapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for any one

purpose may not exceed $300 annually. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [2007, c. 402, Pt. J, §12 (AMD); 2011, c. 286, Pt. B, §5 (REV).]

1. **License renewal.** All licenses issued by the board expire February 1st annually or such other time as the Commissioner of Professional and Financial Regulation may designate. Any person holding a license under this law may have the license renewed by making and filing an application with the board and upon payment of the renewal fee as set under this section.

A. [1999, c. 685, §1 (RP).]

B. [1999, c. 685, §1 (RP).]

C. [1999, c. 685, §1 (RP).]

D. [1999, c. 685, §1 (RP).]

E. [1999, c. 685, §1 (RP).]

F. [1999, c. 685, §1 (RP).]

[2007, c. 402, Pt. J, §12 (AMD) .]

2. **Late renewal.** A license may be renewed up to 90 days after the date of its expiration upon payment of a late fee in addition to the renewal fee. Any person who submits an application for renewal more than 90 days after the license expiration date 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 the renewal application is received, together with the late fee and renewal fee as set under this section, within 2 years from the date of the expiration.

[2007, c. 402, Pt. J, §12 (AMD) .]

SECTION HISTORY
1965, c. 360, §3 (RPR). 1967, c. 253, §10 (RPR). 1969, c. 285, §5 (AMD). 1981, c. 328, §§1-4 (AMD). 1983, c. 413, §63 (RPR). 1983, c. 553, §34 (AMD). 1983, c. 816, §A33 (AMD). 1989, c. 450, §24 (RPR). 1999, c. 685, §1 (AMD). 2007, c. 402, Pt. J, §12 (AMD). 2011, c. 286, Pt. B, §5 (REV).

§1505. NOTICE TO HOLDERS OF EXPIRING LICENSES

(REPEALED)

SECTION HISTORY
1983, c. 553, §35 (AMD). 2007, c. 402, Pt. J, §13 (RP).

§1506. EDUCATIONAL REQUIREMENTS

1. **Applicability.** This section applies to all persons licensed for the practice of funeral service in accordance with section 1501.

[1991, c. 117, §1 (NEW) .]

2. **Requirements.** As a prerequisite to renewal on or after January 1, 1993 of any license subject to this subchapter, licensees must complete 12 hours of continuing education within 2 years prior to the date of renewal in programs or courses approved by the board. The board may, for good cause shown, grant an extension of time to any person to allow that person to comply with this subchapter.

[1991, c. 117, §1 (NEW) .]

3. **Program approval.** Each application for approval of a continuing education program must be submitted according to the guidelines prescribed by the board. The board may establish by rule criteria for the review and approval of courses and for the determination of the number of continuing education hours to be credited for completion of each course or program.

[1991, c. 117, §1 (NEW) .]

4. **Penalties.** The license for the practice of funeral service of any person who fails to comply with this section may not be renewed and terminates upon the next expiration date.

[1991, c. 117, §1 (NEW) .]

5. **Rulemaking authority.** The board may establish by rule reasonable procedures and standards to fulfill the purposes of this section.

[1991, c. 117, §1 (NEW) .]

SECTION HISTORY
1991, c. 117, §1 (NEW).

§1507. INACTIVE STATUS LICENSE

A licensee who is no longer actively practicing funeral service may apply for an inactive status license pursuant to Title 10, section 8003, subsection 5-A, paragraph D, subparagraph (5). The holder of an inactive status license may not practice funeral service in the State. The fee for inactive status licensure is set under section 1504. The holder of an inactive status license must renew the license annually and pay the renewal fee as set under section 1504, but is not required to meet the continuing education requirement of this chapter and the rules adopted under it. [2007, c. 1, §17 (COR).]

A holder of an inactive status license who wishes to reinstate that holder's active license must comply with the continuing education requirement and fees provided in this chapter and the rules adopted under it. [2007, c. 402, Pt. J, §14 (AMD).]

SECTION HISTORY
1993, c. 404, §A1 (NEW). 1997, c. 210, §6 (AMD). RR 2007, c. 1, §17 (COR). 2007, c. 402, Pt. J, §14 (AMD).

Chapter 22: AMERICAN SIGN LANGUAGE, ENGLISH INTERPRETERS AND TRANSLITERATORS

§1521. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1997, c. 749, §3 (NEW).]

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

[1997, c. 749, §3 (NEW) .]

1-A. **Deaf interpreter.** "Deaf interpreter" means a person whose sense of hearing is nonfunctional for the purpose of communication, whose primary means of communication is visual or tactile and who provides intermediary interpreting.

[1999, c. 399, §3 (NEW); 1999, c. 399, §20 (AFF) .]

2. **Deaf person.** "Deaf person" means a person whose sense of hearing is nonfunctional for the purpose of communication and whose primary means of communication is visual or tactile.

[1999, c. 399, §4 (AMD); 1999, c. 399, §20 (AFF) .]

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

[1997, c. 749, §3 (NEW) .]

4. **Hard-of-hearing person.** "Hard-of-hearing person" means a person who has a functional hearing deficit, who may or may not primarily use visual communication and who may or may not use assistive devices.

[1997, c. 749, §3 (NEW) .]

5. **Interpreting.** "Interpreting" means the process when a linguistic intermediary between a deaf or hard-of-hearing person and another person translates the spoken utterances or signs, gestures or writing of either person into a linguistic form other than that which that person uses as a primary and preferred form of communication. For the purposes of this chapter, "interpreting" or "transliterating" does not mean communication using cued speech.

[1999, c. 399, §5 (AMD); 1999, c. 399, §20 (AFF) .]

6. **Interpreter or transliterator.** "Interpreter or transliterator" means a person who provides any of the following services:

A. English-based transliterating, which includes but is not limited to conveying a message by visible representations of the English language such as manually coded English and oral transliteration. This process conveys information from one mode of English to another mode of English; [1997, c. 749, §3 (NEW).]

B. American Sign Language-based interpreting, which is the process of conveying information between American Sign Language and English; or [1997, c. 749, §3 (NEW).]

C. Intermediary interpreting, which means interpreting services rendered by a deaf interpreter to facilitate communication between another deaf person and another licensed interpreter or between 2 or more deaf persons. [1999, c. 399, §6 (AMD); 1999, c. 399, §20 (AFF).]

[1999, c. 399, §20 (AMD); 1999, c. 399, §6 (AMD) .]

SECTION HISTORY
1997, c. 749, §3 (NEW). 1999, c. 399, §§3-6 (AMD). 1999, c. 399, §20 (AFF).

§1522. COMMISSIONER; POWERS AND DUTIES

The commissioner has the following powers and duties in addition to other powers and duties set forth in this chapter. [1997, c. 749, §3 (NEW).]

1. **Rules.** The commissioner may adopt rules in accordance with the Maine Administrative Procedure Act necessary to carry out the purposes of this chapter. Rules adopted under this chapter are routine technical rules pursuant to Title 5, section 8071.

[1997, c. 749, §3 (NEW) .]

2. **Licensure.** The commissioner shall license a person who has successfully complied with the application process established by the department, paid the required fees established by the department under sections 1527 and 1528 and met the qualifications for licensure as set forth in section 1524. The commissioner shall make available, at cost, a directory that contains the names of all individuals licensed pursuant to this chapter.

[1999, c. 399, §7 (AMD); 1999, c. 399, §20 (AFF) .]

3. **Employees.**

[2007, c. 402, Pt. K, §1 (RP) .]

4. **Advisory council.** The commissioner, as necessary, may select members of the interpreting profession and other interested parties to serve on an advisory council to advise and consult with the commissioner concerning the regulation of interpreters for the deaf and hard-of-hearing. Service on the council is not in itself a conflict of interest regardless of the occupations or associations of the members.

[1999, c. 399, §8 (NEW); 1999, c. 399, §20 (AFF) .]

SECTION HISTORY
1997, c. 749, §3 (NEW). 1999, c. 399, §§7,8 (AMD). 1999, c. 399, §20 (AFF). 2007, c. 402, Pt. K, §1 (AMD).

§1523. PRIVILEGED COMMUNICATION

Individuals licensed under this chapter are included under the evidentiary communications privilege outlined in Title 5, section 48-A, subsection 5. [2003, c. 685, §3 (AMD).]

SECTION HISTORY
1997, c. 749, §3 (NEW). 1999, c. 399, §9 (AMD). 1999, c. 399, §20 (AFF). 2003, c. 685, §3 (AMD).

§1524. REQUIREMENTS FOR LICENSURE; LIMITED INTERPRETER AND LIMITED TRANSLITERATOR

To be eligible for licensure as a limited interpreter or limited transliterator under this chapter, an applicant must be at least 18 years of age and must provide the following: [1999, c. 399, §10 (AMD); 1999, c. 399, §20 (AFF).]

1. **High school diploma.** Proof of a high school diploma or the equivalent;

[1997, c. 749, §3 (NEW) .]

2. **References.**

[1999, c. 399, §20 (AFF); 1999, c. 399, §10 (RP) .]

3. **Sworn statement.**

[2007, c. 402, Pt. K, §2 (RP) .]

4. **Proof of education and training in American Sign Language.** Except as provided in this section, written proof of the applicant's education and training in American Sign Language, consisting of either:

A. Proof of completion of at least 100 clock hours of instruction in American Sign Language conducted by:

(1) An instructor recognized by the American Sign Language Teachers Association, or a comparable or successor organization recognized by the commissioner;

(2) An interpreter certified by either the Registry of Interpreters for the Deaf, Inc. or the National Association of the Deaf, Inc., or a comparable or successor organization of either recognized by the commissioner; or

(3) An instructor of courses conducted through an accredited college, accredited university or accredited or approved high school or conducted by certification maintenance course sponsors approved by the Registry of Interpreters for the Deaf, Inc. or the National Association of the Deaf, Inc., or a comparable or successor organization of either recognized by the commissioner; or [1999, c. 399, §10 (NEW); 1999, c. 399, §20 (AFF).]

B. Submission of a letter attesting that the applicant's skill level is equivalent to a person who has completed 100 hours of instruction in American Sign Language. The letter must be prepared and signed by:

(1) An instructor recognized by the American Sign Language Teachers Association, or a comparable or successor organization recognized by the commissioner;

(2) An interpreter certified by either the Registry of Interpreters for the Deaf, Inc. or the National Association of the Deaf, Inc., or a comparable or successor organization of either recognized by the commissioner; or

(3) An instructor of courses conducted through an accredited college, accredited university or accredited or approved high school or conducted by certification maintenance course sponsors approved by the Registry of Interpreters for the Deaf, Inc. or the National Association of the Deaf, Inc., or a comparable or successor organization of either recognized by the commissioner; and [1999, c. 399, §10 (NEW); 1999, c. 399, §20 (AFF).]

[2005, c. 267, §1 (AMD) .]

5. **Proof of education and training in interpreting process.** Except as provided in this section, written proof of completion of at least 100 clock hours of instruction in the interpreting process, which must include instruction in deaf culture and the ethics of interpreting, conducted through an accredited college, accredited university or accredited or approved high school or conducted by certification maintenance course sponsors approved by the Registry of Interpreters for the Deaf, Inc. or the National Association of the Deaf, Inc., or a comparable or successor organization of either recognized by the commissioner. Credit may not be given for interpreting process clock hours that were completed prior to 5 years from the date of application.

[2005, c. 267, §1 (AMD) .]

As an alternative to satisfying subsections 4 and 5, an applicant for licensure as a limited interpreter or limited transliterator may submit documentation of a score of 3.5 or higher on the Educational Interpreter Performance Assessment, or successor assessment. [2005, c. 267, §1 (NEW).]

SECTION HISTORY
1997, c. 749, §3 (NEW). 1999, c. 399, §10 (AMD). 1999, c. 399, §20 (AFF). 2005, c. 267, §1 (AMD). 2007, c. 402, Pt. K, §2 (AMD).

§1524-A. REQUIREMENTS FOR LICENSURE; LIMITED DEAF INTERPRETER

To be eligible for licensure as a limited deaf interpreter under this chapter, an applicant must be at least 18 years of age and must provide the following: [1999, c. 399, §11 (NEW); 1999, c. 399, §20 (AFF).]

1. **High school diploma.** Proof of a high school diploma or the equivalent;

[1999, c. 399, §11 (NEW); 1999, c. 399, §20 (AFF) .]

2. **Sworn statement.**

[2007, c. 402, Pt. K, §3 (RP) .]

3. **Proof of education and training in American Sign Language.** Written proof of the applicant's education and training in American Sign Language, consisting of a letter attesting that the applicant's skill level is equivalent to a person who has completed 100 hours of instruction in American Sign Language. The letter must be prepared and signed by:

A. An instructor recognized by the American Sign Language Teachers Association, or a comparable or successor organization recognized by the commissioner; [1999, c. 399, §11 (NEW); 1999, c. 399, §20 (AFF).]

B. An interpreter certified by either the Registry of Interpreters for the Deaf, Inc. or the National Association of the Deaf, Inc., or a comparable or successor organization of either recognized by the commissioner; or [1999, c. 399, §11 (NEW); 1999, c. 399, §20 (AFF).]

C. An instructor of courses conducted through an accredited college, accredited university or accredited or approved high school or conducted by certification maintenance course sponsors approved by the Registry of Interpreters for the Deaf, Inc. or the National Association of the Deaf, Inc., or a comparable or successor organization of either recognized by the commissioner; and [1999, c. 399, §11 (NEW); 1999, c. 399, §20 (AFF).]

[1999, c. 399, §11 (NEW); 1999, c. 399, §20 (AFF) .]

4. **Proof of education and training in the interpreting process.** Written proof of completion of at least 100 clock hours of instruction in the interpreting process, which must include instruction in deaf culture and the ethics of interpreting, conducted through an accredited college, accredited university or accredited or approved high school or conducted by certification maintenance course sponsors approved by the Registry

of Interpreters for the Deaf, Inc. or the National Association of the Deaf, Inc., or a comparable or successor organization of either recognized by the commissioner. Credit may not be given for interpreting process clock hours that were completed prior to 5 years from the date of application.

[1999, c. 399, §11 (NEW); 1999, c. 399, §20 (AFF) .]

As an alternative to satisfying subsections 3 and 4, an applicant for licensure as a limited deaf interpreter may submit documentation of a score of 3.5 or higher on the Educational Interpreter Performance Assessment, or successor assessment. [2007, c. 402, Pt. K, §4 (NEW).]

SECTION HISTORY
1999, c. 399, §11 (NEW). 1999, c. 399, §20 (AFF). 2007, c. 402, Pt. K, §§3, 4 (AMD).

§1524-B. REQUIREMENTS FOR LICENSURE; CERTIFIED INTERPRETER, CERTIFIED DEAF INTERPRETER AND CERTIFIED TRANSLITERATOR

To be eligible for licensure as a certified interpreter, certified deaf interpreter or certified transliterator under this chapter, an applicant must be at least 18 years of age and must provide the following: [1999, c. 399, §11 (NEW); 1999, c. 399, §20 (AFF).]

1. **High school diploma.** Proof of a high school diploma or the equivalent; and

[2009, c. 112, Pt. A, §6 (AMD) .]

2. **Sworn statement.**

[2009, c. 112, Pt. A, §7 (RP) .]

3. **Proof of certification.** Documented proof of certification by the Registry of Interpreters for the Deaf, Inc., documented proof of a minimum certification level of 4 from the National Association of the Deaf, Inc. or comparable certification by a comparable or successor organization recognized by the commissioner.

[1999, c. 399, §11 (NEW); 1999, c. 399, §20 (AFF) .]

SECTION HISTORY
1999, c. 399, §11 (NEW). 1999, c. 399, §20 (AFF). 2009, c. 112, Pt. A, §§6, 7 (AMD).

§1525. LICENSE REQUIRED

After June 30, 2000, a person may not provide interpreting services as defined in this chapter for compensation or remuneration unless properly licensed in accordance with this chapter. [1999, c. 399, §12 (AMD); 1999, c. 399, §20 (AFF).]

SECTION HISTORY
1997, c. 749, §3 (NEW). 1999, c. 399, §12 (AMD). 1999, c. 399, §20 (AFF).

§1525-A. EXEMPTIONS TO LICENSURE

1. **Nonresident interpreters.** This chapter does not apply to interpreters who are residents of a jurisdiction other than this State and who do not interpret for compensation or remuneration in the State for more than 160 hours per year. Service during declared state or national emergencies does not count toward the 160 hours per year limitation.

[1999, c. 399, §13 (NEW); 1999, c. 399, §20 (AFF) .]

2. **Medical emergencies.** This chapter does not apply to a person providing communication assistance during a medical emergency. For purposes of this subsection, "medical emergency" is when a person's medical condition could be significantly compromised by delaying assessment and treatment.

[1999, c. 399, §13 (NEW); 1999, c. 399, §20 (AFF) .]

SECTION HISTORY
1999, c. 399, §13 (NEW). 1999, c. 399, §20 (AFF).

§1526. TEMPORARY REGISTRATION

(REPEALED)

SECTION HISTORY
1997, c. 749, §3 (NEW). 2007, c. 402, Pt. K, §5 (RP).

§1527. APPLICATIONS FOR LICENSURE; FEES

The Director of the Office of Professional and Occupational Regulation within the department may establish by rule fees for purposes authorized under this chapter in amounts that are reasonable and necessary for their respective purposes, except that an application fee may not exceed $50, an initial license fee may not exceed $325 and an applicant who is deaf must pay an initial license fee of $100. An applicant for initial licensure, pursuant to section 1524, 1524-A or 1524-B, shall submit a written application with supporting documents to the department. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2007, c. 402, Pt. K, §6 (AMD); 2011, c. 286, Pt. B, §5 (REV).]

SECTION HISTORY
1997, c. 749, §3 (NEW). 1999, c. 399, §14 (AMD). 1999, c. 399, §20 (AFF). 2005, c. 267, §2 (AMD). 2007, c. 402, Pt. K, §6 (AMD). 2011, c. 286, Pt. B, §5 (REV).

§1528. RENEWAL

All licenses must be renewed annually on or before June 30th of each year or at such other time as the commissioner may designate. A license not renewed by June 30th automatically expires. The department may renew an expired license if the renewal application is returned within 90 days after the license expiration date and upon payment of a late fee as set under section 1527 in addition to the renewal fee as set under section 1527. A person who submits an application for renewal more than 90 days after the license expiration date is subject to all requirements governing new applicants under this chapter. [2007, c. 402, Pt. K, §7 (AMD).]

SECTION HISTORY
1997, c. 749, §3 (NEW). 1999, c. 399, §14 (AMD). 1999, c. 399, §20 (AFF). 2005, c. 267, §3 (AMD). 2007, c. 402, Pt. K, §7 (AMD).

§1528-A. CONTINUING EDUCATION

1. **Limited interpreters.** An application for renewal of a limited interpreter, limited transliterator or limited deaf interpreter license must show proof of completion of at least 20 hours annually of continuing education in American Sign Language or the interpreting process.

[2005, c. 267, §4 (AMD) .]

2. **Certified interpreters.** An applicant for renewal of a certified interpreter, certified deaf interpreter or certified transliterator license is not required to show proof of continuing education, but is required to show proof of continued certification by either the Registry of Interpreters for the Deaf, Inc. or the National Association of the Deaf, Inc., or a comparable or successor organization of either recognized by the commissioner.

[1999, c. 399, §15 (NEW); 1999, c. 399, §20 (AFF) .]

SECTION HISTORY
1999, c. 399, §15 (NEW). 1999, c. 399, §20 (AFF). 2005, c. 267, §4 (AMD).

§1529. VIOLATIONS

A person who violates section 1525 is subject to the provisions of Title 10, section 8003-C. [2007, c. 402, Pt. K, §8 (AMD).]

SECTION HISTORY
1997, c. 749, §3 (NEW). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 402, Pt. K, §8 (AMD).

§1530. DENIAL OR REFUSAL TO RENEW LICENSE; DISCIPLINARY ACTION

In addition to the grounds enumerated in Title 10, section 8003, subsection 5-A, paragraph A, the department may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A upon a medical finding of mental incompetency. [2007, c. 402, Pt. K, §9 (RPR).]

SECTION HISTORY
RR 1997, c. 2, §54 (COR). 1997, c. 749, §3 (NEW). 1999, c. 399, §16 (AMD). 1999, c. 399, §20 (AFF). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 402, Pt. K, §9 (RPR).

§1531. DISCLOSURE

All interpreters licensed pursuant to this chapter shall disclose their license category with specific certifications held and any postsecondary degrees to consumers and to the person or persons engaging the interpreter's services. The content and form of the disclosure must be developed by the department pursuant to rule-making provisions of the Maine Administrative Procedure Act. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [2005, c. 267, §5 (AMD).]

SECTION HISTORY
1999, c. 399, §17 (NEW). 1999, c. 399, §20 (AFF). 2005, c. 267, §5 (AMD).

§1532. CONVERSION OF REGISTRANTS TO LIMITED LICENSEES

(REPEALED)

SECTION HISTORY
1999, c. 399, §17 (NEW). 1999, c. 399, §20 (AFF). 2005, c. 267, §6 (RP).

Chapter 23: COSMETOLOGY

Subchapter 1: GENERAL PROVISIONS HEADING: PL 1991, C. 397, §5 (RP)

§1551. DEFINITIONS

(REPEALED)

SECTION HISTORY
1967, c. 272, §§1,2 (AMD). 1969, c. 119, (AMD). 1977, c. 398, §10 (RPR). 1983, c. 841, §§16,17 (AMD). 1987, c. 395, §§A144,A145 (AMD). 1987, c. 677, §§1,2 (AMD). 1989, c. 700, §A139 (AMD). 1991, c. 351, §1 (AMD). 1991, c. 397, §5 (RP). 1991, c. 824, §A65 (AMD).

§1552. EXEMPTIONS; EXCEPTIONS

(REPEALED)

SECTION HISTORY
1977, c. 398, §10 (RPR). 1985, c. 506, §A67 (AMD). 1987, c. 395, §A146 (AMD). 1989, c. 162, §3 (AMD). 1991, c. 397, §5 (RP).

§1553. SCHOOLS

(REPEALED)

SECTION HISTORY
1965, c. 349, (AMD). 1967, c. 376, (AMD). 1973, c. 101, §2 (AMD). 1973, c. 303, §3 (AMD). 1975, c. 119, §1 (AMD). 1977, c. 398, §10 (RPR). 1977, c. 694, §§568,569 (AMD). 1977, c. 696, §238 (AMD). 1983, c. 413, §64 (RP).

§1553-A. INSTRUCTORS OF COSMETOLOGY

(REPEALED)

SECTION HISTORY
1983, c. 841, §18 (NEW). 1987, c. 395, §A147 (AMD). 1989, c. 700, §A140 (AMD). 1991, c. 397, §5 (RP).

§1554. ELECTROLYSIS

(REPEALED)

SECTION HISTORY
1977, c. 398, §10 (RPR). 1979, c. 87, §2 (RP).

§1555. PENALTIES

(REPEALED)

SECTION HISTORY
1977, c. 398, §10 (RPR). 1983, c. 413, §65 (AMD). 1987, c. 395, §A148 (AMD). 1991, c. 397, §5 (RP).

§1556. PRACTICING IN SAME SHOPS

(REPEALED)

SECTION HISTORY
1977, c. 398, §10 (NEW). 1987, c. 395, §A149 (RPR). 1991, c. 397, §5 (RP).

Subchapter 2: STATE BOARD OF COSMETOLOGY
HEADING: PL 1991, C. 397, §5 (RP)

§1601. BOARD

(REPEALED)

SECTION HISTORY
1965, c. 402, §§1,2 (AMD). 1971, c. 277, §2 (AMD). 1971, c. 614, §2 (AMD). 1973, c. 96, (AMD). 1973, c. 101, §§1,2 (AMD). 1973, c. 137, (AMD). 1973, c. 303, §3 (AMD). 1975, c. 22, (AMD). 1975, c. 76, (AMD). 1975, c. 575, §21 (AMD). 1975, c. 771, §§344-346 (AMD). 1977, c. 398, §10 (RPR). 1977, c. 604, §17 (AMD). 1983, c. 413, §§66,67 (AMD). 1983, c. 553, §46 (AMD). 1983, c. 812, §§207,208 (AMD). 1985, c. 785, §B132 (AMD). 1987, c. 395, §A150 (AMD). 1989, c. 450, §25 (AMD). 1989, c. 503, §B128 (AMD). 1991, c. 397, §5 (RP).

§1602. POWERS AND DUTIES

(REPEALED)

SECTION HISTORY
1973, c. 303, §3 (AMD). 1975, c. 293, §4 (AMD). 1977, c. 398, §10 (RPR). 1977, c. 604, §18 (AMD). 1977, c. 694, §§570-572 (AMD). 1983, c. 413, §§68-71 (AMD). 1983, c. 553, §46 (AMD). 1983, c. 758, §§7,8 (AMD). 1983, c. 841, §19 (AMD). 1987, c. 395, §§A151-A153 (AMD). 1989, c. 162, §4 (AMD). 1989, c. 502, §B37 (AMD). 1991, c. 397, §5 (RP).

§1603. REGISTER OF NAMES

(REPEALED

SECTION HISTORY
1977, c. 398, §10 (RPR). 1983, c. 841, §20 (AMD). 1987, c. 395, §A154 (AMD). 1991, c. 397, §5 (RP).

§1604. DISPOSAL OF FEES

(REPEALED)

SECTION HISTORY
1977, c. 398, §10 (RPR). 1991, c. 397, §5 (RP).

Subchapter 3: LICENSURE HEADING: PL 1991, C. 397, §5 (RP)

§1651. REGISTRATION AND LICENSES

(REPEALED)

SECTION HISTORY

1975, c. 119, §2 (AMD). 1977, c. 398, §10 (RPR). 1987, c. 395, §A156 (AMD). 1991, c. 397, §5 (RP).

§1652. QUALIFICATIONS

(REPEALED)

SECTION HISTORY
1975, c. 50, (AMD). 1977, c. 398, §10 (RPR). 1983, c. 841, §§21,22 (AMD). 1987, c. 395, §§A157-A159 (AMD). 1989, c. 700, §§A141,142 (AMD). 1991, c. 397, §5 (RP).

§1652-A. QUALIFICATIONS FOR AESTHETICIANS

(REPEALED)

SECTION HISTORY
1987, c. 677, §3 (NEW). 1989, c. 700, §A143 (AMD). 1991, c. 351, §2 (AMD). 1991, c. 397, §5 (RP). 1991, c. 824, §A66 (AMD).

§1653. TEMPORARY PERMIT

(REPEALED)

SECTION HISTORY
1973, c. 119, (AMD). 1975, c. 119, §3 (AMD). 1977, c. 398, §10 (RPR). 1987, c. 395, §A160 (AMD). 1991, c. 397, §5 (RP).

§1654. RECIPROCITY WITH OTHER STATES

(REPEALED)

SECTION HISTORY
1975, c. 119, §4 (AMD). 1977, c. 398, §10 (RPR). 1981, c. 92, (AMD). 1983, c. 413, §72 (AMD). 1983, c. 841, §23 (AMD). 1987, c. 395, §A161 (AMD). 1987, c. 677, §4 (AMD). 1991, c. 397, §5 (RP).

§1655. APPRENTICES

(REPEALED)

SECTION HISTORY
1975, c. 119, §§5,6 (AMD). 1977, c. 398, §10 (RPR). 1987, c. 395, §A162 (AMD). 1991, c. 351, §3 (AMD). 1991, c. 397, §5 (RP). 1991, c. 824, §A67 (RP).

§1655-A. STUDENT COSMETOLOGISTS

(REPEALED)

SECTION HISTORY
1983, c. 841, §24 (NEW). 1987, c. 395, §A163 (AMD). 1989, c. 700, §A144 (AMD). 1991, c. 397, §5 (RP).

§1656. DEMONSTRATIONS; MANICURING

(REPEALED)

SECTION HISTORY
1973, c. 303, §3 (AMD). 1977, c. 398, §10 (RPR). 1981, c. 501, §60 (AMD). 1987, c. 395, §A164 (AMD). 1991, c. 397, §5 (RP).

§1657. LICENSES; RENEWAL

(REPEALED)

SECTION HISTORY
1977, c. 398, §10 (RPR). 1983, c. 413, §73 (AMD). 1987, c. 395, §A165 (AMD). 1987, c. 677, §5 (AMD). 1989, c. 450, §26 (AMD). 1991, c. 397, §5 (RP).

§1657-A. SUSPENSION, REVOCATION AND REFUSAL TO ISSUE OR TO RENEW LICENSE

(REPEALED)

SECTION HISTORY
1977, c. 398, §10 (NEW). 1977, c. 694, §573 (AMD). 1977, c. 696, §239 (RAL). 1979, c. 127, §179 (AMD). 1983, c. 413, §74 (RPR). 1987, c. 395, §A166 (AMD). 1991, c. 397, §5 (RP).

§1657-B. FEES

(REPEALED)

SECTION HISTORY
1987, c. 395, §A167 (NEW). 1987, c. 677, §§6,7 (AMD). 1991, c. 397, §5 (RP).

Chapter 23-A: HEARING AID DEALERS AND FITTERS

§1658. DEFINITIONS

(REPEALED)

SECTION HISTORY
1969, c. 320, (NEW). 1971, c. 327, §§1,2 (AMD). 1975, c. 463, §3 (RPR). 1977, c. 398, §10 (RPR). 1977, c. 694, §573 (AMD). 1977, c. 696, §239 (RAL). 1979, c. 127, §180 (AMD). 1981, c. 703, §§A49,A50 (AMD). 1983, c. 553, §46 (AMD). 1983, c. 812, §209 (AMD). 1989, c. 503, §B129 (AMD). RR 1993, c. 1, §§84,85 (COR). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §1 (RP).

§1658-A. LICENSE REQUIRED TO SELL OR FIT HEARING AIDS

(REPEALED)

SECTION HISTORY
1969, c. 320, (NEW). 1975, c. 463, §3 (RPR). 1977, c. 696, §240 (AMD). 1981, c. 703, §§A51,A52 (AMD). 1983, c. 413, §75 (RPR). 1987, c. 597, §1 (AMD). RR 1991, c. 1, §45 (COR). 1991, c. 509, §6 (AMD). 1995, c. 502, §§H26,27 (AMD). 1997, c. 156, §§1,2 (AMD). 2001, c. 323, §19 (AMD). 2003, c. 609, §1 (AMD). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §1 (RP).

§1658-B. PAYMENT; TRIAL PERIOD; MEDICAL RETURN

(REPEALED)

SECTION HISTORY
1969, c. 320, (NEW). 1971, c. 327, §§3,4 (AMD). 1975, c. 463, §3 (RPR). 1987, c. 597, §2 (AMD). 1999, c. 386, §G1 (RPR). 2001, c. 260, §C1 (RPR). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §1 (RP).

§1658-C. NOTICE REQUIRED TO BE FURNISHED TO A PERSON SUPPLIED WITH HEARING AID

(REPEALED)

SECTION HISTORY
1969, c. 320, (NEW). 1971, c. 327, §5 (AMD). 1975, c. 463, §3 (RPR). 1981, c. 703, §§A53,A54 (AMD). 1987, c. 597, §3 (AMD). 1991, c. 509, §7 (AMD). 2001, c. 260, §C2 (AMD). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §1 (RP).

§1658-D. MEDICAL OR AUDIOLOGICAL EXAMINATION

(REPEALED)

SECTION HISTORY
1969, c. 320, (NEW). 1969, c. 433, §81 (AMD). 1971, c. 544, §115 (RP). 1975, c. 463, §3 (RPR). 1981, c. 703, §A55 (AMD). 1995, c. 353, §11 (AMD). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §1 (RP).

§1658-E. PERSONS AND PRACTICES NOT AFFECTED

(REPEALED)

SECTION HISTORY
1969, c. 320, (NEW). 1971, c. 327, §6 (AMD). 1975, c. 463, §3 (RPR). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §1 (RP).

§1658-F. RECORDS

(REPEALED)

SECTION HISTORY
1969, c. 320, (NEW). 1969, c. 433, §82 (AMD). 1971, c. 327, §7 (AMD). 1971, c. 598, §71 (AMD). 1973, c. 625, §213 (AMD). 1975, c. 463, §3 (RPR). 1981, c. 703, §§A56,A57 (AMD). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §1 (RP).

§1658-G. CALIBRATION

(REPEALED)

SECTION HISTORY
1969, c. 320, (NEW). 1971, c. 327, §8 (RPR). 1975, c. 463, §3 (RPR). 1981, c. 703, §§A58,A59 (AMD). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §1 (RP).

§1658-H. RECIPROCITY

(REPEALED)

SECTION HISTORY
1969, c. 320, (NEW). 1971, c. 327, §9 (AMD). 1975, c. 463, §3 (RPR). 1981, c. 703, §§A60,A61 (AMD). 1983, c. 413, §76 (AMD). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §1 (RP).

§1658-I. QUALIFICATIONS

(REPEALED)

SECTION HISTORY
1969, c. 320, (NEW). 1975, c. 463, §3 (RPR). 1977, c. 78, §178 (AMD). 1981, c. 703, §§A62,A63 (AMD). 1983, c. 413, §77 (AMD). 1997, c. 156, §§3,4 (AMD). 2003, c. 609, §§2,3 (AMD). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §1 (RP).

§1658-J. TRAINEE PERMIT

(REPEALED)

SECTION HISTORY
1969, c. 320, (NEW). 1971, c. 327, §10 (AMD). 1975, c. 463, §3 (RPR). 1981, c. 703, §A64 (AMD). 1983, c. 413, §78 (AMD). 1995, c. 502, §H28 (AMD). 1997, c. 156, §5 (AMD). 2001, c. 323, §20 (AMD). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §1 (RP).

§1658-K. SCOPE OF EXAMINATION

(REPEALED)

SECTION HISTORY
1969, c. 320, (NEW). 1971, c. 327, §11 (AMD). 1973, c. 303, §3 (AMD). 1975, c. 463, §3 (RPR). 1981, c. 703, §A65 (AMD). 1997, c. 156, §§6,7 (AMD). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §1 (RP).

§1658-L. NOTICE TO BOARD OF PLACE OF BUSINESS; NOTICE TO HOLDERS OF LICENSE; HOW GIVEN BY BOARD

(REPEALED)

SECTION HISTORY
1969, c. 320, (NEW). 1975, c. 463, §3 (RPR). 1981, c. 703, §A66 (AMD). 1983, c. 468, §8 (AMD). 1997, c. 156, §8 (AMD). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §1 (RP).

§1658-M. ANNUAL RENEWAL OF LICENSE; FEES; EFFECT OF FAILURE TO RENEW

(REPEALED)

SECTION HISTORY
1975, c. 463, §3 (NEW). 1981, c. 191, §1 (AMD). 1981, c. 703, §A67 (AMD). 1983, c. 413, §79 (RPR). 1991, c. 509, §8 (AMD). 1995, c. 502, §H29 (AMD). 1997, c. 156, §9 (RPR). 2001, c. 323, §21 (AMD). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §1 (RP).

§1658-N. INVESTIGATION; GROUNDS FOR SUSPENSION OF LICENSE

(REPEALED)

SECTION HISTORY
1975, c. 463, §3 (NEW). 1977, c. 694, §574 (AMD). 1981, c. 703, §§A68,A69 (AMD). 1983, c. 413, §80 (RPR). 1997, c. 156, §§10,11 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §1 (RP).

§1658-O. PROHIBITED ACTS AND PRACTICES

(REPEALED)

SECTION HISTORY
1975, c. 463, §3 (NEW). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §1 (RP).

§1658-P. FEES

(REPEALED)

SECTION HISTORY
1997, c. 156, §12 (NEW). 2001, c. 323, §22 (RPR). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §1 (RP).

§1659. HEARINGS

(REPEALED)

SECTION HISTORY
1969, c. 320, (NEW). 1973, c. 303, §3 (AMD). 1975, c. 463, §3 (RPR). 1977, c. 696, §241 (AMD). 1981, c. 703, §A70 (AMD). 1983, c. 413, §81 (RPR). 1997, c. 156, §13 (AMD). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §1 (RP).

§1659-B. DUTIES OF THE BOARD (REPEALED)

SECTION HISTORY
1969, c. 320, (NEW). 1971, c. 327, §12 (AMD). 1975, c. 463, §3 (RP).

§1659-C. MEETINGS OF BOARD (REPEALED)

SECTION HISTORY
1969, c. 320, (NEW). 1971, c. 327, §13 (AMD). 1975, c. 463, §3 (RP).

§1659-D. DISPOSITION OF RECEIPTS; STATE DEPARTMENT HEARING AID ACCOUNT (REPEALED)

SECTION HISTORY
1969, c. 320, (NEW). 1975, c. 463, §3 (RP).

§1660-A. BOARD OF HEARING AID DEALERS AND FITTERS

(REPEALED)

SECTION HISTORY
1975, c. 463, §3 (NEW). 1975, c. 771, §347 (AMD). 1981, c. 703, §A72 (AMD). 1983, c. 413, §§82,83 (AMD). 1983, c. 812, §§210,211 (AMD). 1989, c. 503, §B130 (AMD). 1993, c. 600, §A106 (AMD). 1993, c. 659, §A4 (AMD). 1999, c. 687, §E4 (AMD). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §1 (RP).

§1660-B. POWERS AND DUTIES OF THE BOARD

(REPEALED)

SECTION HISTORY
1975, c. 463, §3 (NEW). 1981, c. 703, §A73 (RPR). 1983, c. 413, §84 (AMD). 1985, c. 785, §B133 (AMD). 1995, c. 397, §§35,36 (AMD). 1997, c. 156, §14 (AMD). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §1 (RP).

§1660-C. MEETINGS OF BOARD

(REPEALED)

SECTION HISTORY
1975, c. 463, §3 (NEW). 1981, c. 703, §A74 (AMD). 1983, c. 413, §85 (AMD). 1999, c. 687, §E5 (AMD). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §1 (RP).

§1660-D. DISPOSITION OF RECEIPTS; HEARING AID ACCOUNT

(REPEALED)

SECTION HISTORY
1975, c. 293, §4 (AMD). 1975, c. 463, §3 (NEW). 1981, c. 703, §A75 (RPR). 1983, c. 553, §46 (AMD). RR 1993, c. 1, §86 (COR). 1995, c. 397, §37 (RP). 1995, c. 397, §37 (RP).

§1660-E. VIOLATIONS

(REPEALED)

SECTION HISTORY
1975, c. 463, §3 (NEW). 1981, c. 703, §A76 (AMD). 1983, c. 413, §86 (RPR). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2001, c. 421, §B96 (AMD). 2001, c. 421, §C1 (AFF). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §1 (RP).

§1660-F. SEVERABILITY

(REPEALED)

SECTION HISTORY
1975, c. 463, §3 (NEW). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §1 (RP).

Chapter 24: LAND SURVEYORS

Subchapter 1: GENERAL PROVISIONS REPEALED

§1661. PURPOSE

(REPEALED)

SECTION HISTORY
1967, c. 423, §1 (NEW). 1981, c. 5, §1 (AMD). 1989, c. 346, §2 (RP).

§1662. DEFINITIONS

(REPEALED)

SECTION HISTORY
1967, c. 423, §1 (NEW). 1989, c. 346, §2 (RP).

§1663. OTHER LEGALLY RECOGNIZED PROFESSIONS NOT AFFECTED

(REPEALED)

SECTION HISTORY
1967, c. 423, §1 (NEW). 1973, c. 625, §214 (AMD). 1981, c. 5, §2 (AMD). 1989, c. 346, §2 (RP).

§1664. PUBLIC WORKS

(REPEALED)

SECTION HISTORY
1967, c. 423, §1 (NEW). 1989, c. 346, §2 (RP).

§1665. EXEMPTIONS

(REPEALED)

SECTION HISTORY
1967, c. 423, §1 (NEW). 1981, c. 5, §3 (AMD). 1983, c. 413, §§87,88 (AMD). 1989, c. 346, §2 (RP).

§1666. VIOLATIONS

(REPEALED)

SECTION HISTORY
1967, c. 423, §1 (NEW). 1981, c. 5, §4 (AMD). 1983, c. 413, §89 (AMD). 1989, c. 346, §2 (RP).

Subchapter 2: STATE BOARD OF REGISTRATION REPEALED

§1671. APPOINTMENT; TERMS

(REPEALED)

SECTION HISTORY

1967, c. 423, §1 (NEW). 1975, c. 575, §23 (AMD). 1975, c. 771, §348 (AMD). 1983, c. 413, §90 (RPR). 1983, c. 812, §212 (AMD). 1989, c. 346, §2 (RP). 1989, c. 503, §B131 (AMD). 1989, c. 878, §A93 (RP).

§1672. QUALIFICATIONS

(REPEALED)

SECTION HISTORY
1967, c. 423, §1 (NEW). 1975, c. 575, §24 (AMD). 1989, c. 346, §2 (RP).

§1673. COMPENSATION AND EXPENSES

(REPEALED)

SECTION HISTORY
1967, c. 423, §1 (NEW). 1983, c. 812, §213 (RPR). 1989, c. 346, §2 (RP).

§1674. REMOVAL; VACANCIES

(REPEALED)

SECTION HISTORY
1967, c. 423, §1 (NEW). 1975, c. 771, §349 (AMD). 1983, c. 413, §91 (AMD). 1989, c. 346, §2 (RP).

§1675. ORGANIZATION AND MEETINGS

(REPEALED)

SECTION HISTORY
1967, c. 423, §1 (NEW). 1975, c. 575, §25 (AMD). 1983, c. 413, §92 (AMD). 1989, c. 346, §2 (RP).

§1676. POWERS

(REPEALED)

SECTION HISTORY
1967, c. 423, §1 (NEW). 1977, c. 694, §576 (AMD). 1981, c. 5, §5 (AMD). 1983, c. 413, §93 (RPR). 1989, c. 346, §2 (RP).

§1677. RECEIPTS AND DISBURSEMENTS

(REPEALED)

SECTION HISTORY
1967, c. 423, §1 (NEW). 1989, c. 346, §2 (RP).

§1678. RECORDS AND REPORTS

(REPEALED)

SECTION HISTORY
1967, c. 423, §1 (NEW). 1977, c. 604, §19 (AMD). 1981, c. 456, §§A110,A111 (AMD). 1983, c. 413, §94 (RPR). 1983, c. 553, §46 (AMD). 1983, c. 758, §§9,10 (AMD). 1989, c. 346, §2 (RP).

§1679. ROSTERS OF LAND SURVEYORS

(REPEALED)

SECTION HISTORY
1967, c. 423, §1 (NEW). 1981, c. 5, §6 (AMD). 1981, c. 456, §A112 (AMD). 1981, c. 698, §159 (RPR). 1989, c. 346, §2 (RP).

Subchapter 3: REGISTRATION REPEALED

§1681. QUALIFICATIONS

(REPEALED)

SECTION HISTORY
1967, c. 423, §1 (NEW). 1983, c. 413, §§95,96 (AMD). 1989, c. 346, §2 (RP).

§1682. QUALIFICATIONS AS A LAND SURVEYOR-IN-TRAINING

(REPEALED)

SECTION HISTORY
1967, c. 423, §1 (NEW). 1989, c. 346, §2 (RP).

§1683. REGISTRATION OF A LAND SURVEYOR

(REPEALED)

SECTION HISTORY
1967, c. 423, §1 (NEW). 1973, c. 625, §215 (RP).

§1684. REGISTRATION ALTHOUGH NOT PRACTICING

(REPEALED)

SECTION HISTORY
1967, c. 423, §1 (NEW). 1989, c. 346, §2 (RP).

§1685. APPLICATION AND FEES

(REPEALED)

SECTION HISTORY
1967, c. 423, §1 (NEW). 1973, c. 788, §154 (AMD). 1975, c. 623, §50 (AMD). 1979, c. 4, §1 (AMD). 1983, c. 413, §§97,98 (AMD). 1989, c. 346, §2 (RP).

§1686. EXAMINATIONS

(REPEALED)

SECTION HISTORY
1967, c. 423, §1 (NEW). 1989, c. 346, §2 (RP).

§1687. CERTIFICATES; SEALS

(REPEALED)

SECTION HISTORY
1967, c. 423, §1 (NEW). 1989, c. 346, §2 (RP).

§1688. REVOCATION AND REISSUANCE

(REPEALED)

SECTION HISTORY
1967, c. 423, §1 (NEW). 1975, c. 575, §26 (AMD). 1977, c. 694, §§577,578 (AMD). 1983, c. 413, §99 (RPR). 1989, c. 346, §2 (RP).

§1689. EXPIRATION AND RENEWALS

(REPEALED)

SECTION HISTORY
1967, c. 423, §1 (NEW). 1969, c. 64, (AMD). 1979, c. 4, §2 (AMD). 1983, c. 413, §100 (RPR). 1989, c. 346, §2 (RP).

§1690. EXEMPTIONS FROM EXPIRATION AND RENEWAL FEES

(REPEALED)

SECTION HISTORY
1967, c. 423, §1 (NEW). 1989, c. 346, §2 (RP).

§1691. FIRMS, PARTNERSHIPS, CORPORATIONS AND JOINT STOCK ASSOCIATIONS

(REPEALED)

SECTION HISTORY
1967, c. 423, §1 (NEW). 1989, c. 346, §2 (RP).

Chapter 24-A: LIQUID PROPANE DEALERS

§1695. INTEREST ON SECURITY DEPOSITS

Sellers of liquid propane for residential use may collect security deposits from residential customers only if the sellers return to the customers the deposit plus accrued interest at the market rate less any amount owed the seller at the time of the return of the deposit to the customer. [1989, c. 786, (NEW).]

SECTION HISTORY
1989, c. 786, (NEW).

§1696. PENALTY AND ENFORCEMENT

Any person, firm, partnership or corporation that violates any of the provisions of this chapter commits a civil violation for which a civil forfeiture of not more than $500 for each offense must be adjudged. [1989, c. 786, (NEW).]

When the Attorney General becomes cognizant of a possible violation of this chapter, the Attorney General shall investigate the matter and, if the Attorney General has reason to believe a violation has occurred, the Attorney General shall bring action in court to enforce the provisions of this chapter. [1989, c. 786, (NEW).]

SECTION HISTORY
1989, c. 786, (NEW).

Chapter 25: MANUFACTURERS AND SELLERS OF LIGHTNING RODS

§1701. LICENSE REQUIRED

(REPEALED)

SECTION HISTORY
1971, c. 592, §28 (AMD). 1977, c. 227, §1 (AMD). 1985, c. 389, §12 (RP).

§1702. CONDITIONS; BOND; GUARANTEE

(REPEALED)

SECTION HISTORY
1971, c. 592, §36 (AMD). 1977, c. 227, §2 (RPR). 1977, c. 694, §579 (AMD). 1985, c. 389, §12 (RP).

§1703. AGENT'S LICENSE

(REPEALED)

SECTION HISTORY
1977, c. 227, §§3,4 (AMD). 1977, c. 694, §580 (AMD). 1983, c. 553, §46 (AMD). 1985, c. 389, §12 (RP).

§1704. -- EXHIBITION ON OFFICIAL REQUEST

(REPEALED)

SECTION HISTORY
1985, c. 389, §12 (RP).

§1705. SELLING WITHOUT LICENSE; LICENSE NOT TRANSFERABLE

(REPEALED)

SECTION HISTORY
1985, c. 389, §12 (RP).

§1706. HOLDER OF GUARANTEE AGREEMENT MAY BRING CIVIL ACTION ON BOND

(REPEALED)

SECTION HISTORY
1971, c. 592, §36 (AMD). 1977, c. 227, §5 (AMD). 1985, c. 389, §12 (RP).

§1707. LIGHTNING ROD MANUFACTURER'S AND SALESMAN'S LICENSES

(REPEALED)

SECTION HISTORY
1973, c. 56, (AMD). 1979, c. 302, §5 (AMD). 1981, c. 577, §12 (AMD). 1985, c. 389, §12 (RP).

Chapter 26: CODING OF PLASTIC CONTAINERS

§1721. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1989, c. 585, Pt. C, §16 (NEW).]

1. **Plastic bottle.** "Plastic bottle" means any plastic container with a neck smaller than the container body and a capacity not less than 16 fluid ounces and not more than 5 gallons.

[1989, c. 585, Pt. C, §16 (NEW) .]

2. **Plastic container.** "Plastic container" means any bottle, can, jar, case, package or other receptacle intended to hold, carry, or enclose fluids, food items or nonfood products that is composed predominately of plastic resins, including, but not limited to, plastic resins listed in section 1723.

[1989, c. 585, Pt. C, §16 (NEW) .]

3. **Rigid plastic container.** "Rigid plastic container" means any formed or molded plastic container, except plastic bottles, with a capacity not less than 8 fluid ounces and not more than 5 gallons that retains the same shape whether full or empty.

[1989, c. 585, Pt. C, §16 (NEW) .]

SECTION HISTORY
1989, c. 585, §C16 (NEW).

§1722. CODING OF PLASTIC CONTAINERS

On or after July 1, 1991, no person may distribute, sell or offer for sale any plastic bottle or rigid plastic container without a molded, imprinted or raised label indicating the type of plastic resin used to produce the plastic bottle or rigid plastic container. [1989, c. 585, Pt. C, §16 (NEW).]

SECTION HISTORY
1989, c. 585, §C16 (NEW).

§1723. LABELS

1. **Labels.** The label shall appear on the bottom of the plastic bottle or rigid plastic container and be clearly visible. This label shall consist of a number with letters placed below the number. The numbers and letters shall be as follows:

A. For polyethylene terephthalate, the letters "PETE" and the number 1; [1989, c. 585, Pt. C, §16 (NEW).]

B. For high-density polyethylene, the letters "HDPE" and the number 2; [1989, c. 585, Pt. C, §16 (NEW).]

C. For vinyl, the letter "V" and the number 3; [1989, c. 585, Pt. C, §16 (NEW).]

D. For low-density polyethylene, the letters "LDPE" and the number 4; [1989, c. 585, Pt. C, §16 (NEW).]

E. For polypropylene, the letters "PP" and the number 5; [1989, c. 585, Pt. C, §16 (NEW).]

F. For polystyrene, the letters "PS" and the number 6; or [1989, c. 585, Pt. C, §16 (NEW).]

G. For any other plastic resins, including multilayer, the letters "OTHER" and the number 7. [1989, c. 585, Pt. C, §16 (NEW).]

[1989, c. 585, Pt. C, §16 (NEW) .]

2. **Alternative labels.**

[1995, c. 656, Pt. A, §5 (RP) .]

SECTION HISTORY
1989, c. 585, §C16 (NEW). 1991, c. 718, §1 (AMD). 1995, c. 465, §A7 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 656, §A5 (AMD).

§1725. PENALTIES

1. **Civil violation.** A violation of this chapter shall be a civil violation for which a forfeiture of not more than $100 may be adjudged.

[1989, c. 585, Pt. C, §16 (NEW) .]

2. **Separate violation.** Each container in violation constitutes a separate offense.

[1989, c. 585, Pt. C, §16 (NEW) .]

SECTION HISTORY
1989, c. 585, §C16 (NEW).

§1726. ENFORCEMENT

A person who labels a plastic container in violation of this chapter commits a violation of the Maine Unfair Trade Practices Act. [1995, c. 656, Pt. A, §6 (RPR).]

SECTION HISTORY
1989, c. 585, §C16 (NEW). 1995, c. 465, §A8 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 656, §A6 (RPR).

Chapter 26-A: REDUCTION OF TOXICS IN PACKAGING

§1731. PURPOSE

The purpose of this chapter is to reduce toxicity of packaging waste without impeding or discouraging the expanded use of post-consumer materials in the production of packaging and its components. Under this chapter, reduction of the toxicity in packaging is accomplished by prohibiting the unnecessary addition of heavy metals, such as lead, mercury, cadmium and hexavalent chromium, in packaging and packaging components. [1989, c. 849, §1 (NEW).]

SECTION HISTORY
1989, c. 849, §1 (NEW).

§1732. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1989, c. 849, §1 (NEW).]

1. **Agency.**

[1995, c. 656, Pt. A, §7 (RP) .]

1-A. **Department.** "Department" means the Department of Environmental Protection.

[1995, c. 656, Pt. A, §8 (NEW) .]

2. **Distributor.** "Distributor" means any person, firm or corporation that sells a packaged product to a retailer in this State or any person, firm or corporation that receives a shipment or consignment of, or in any other manner acquires, packaged products outside the State for sale to consumers in the State.

[1989, c. 849, §1 (NEW) .]

2-A. **Incidental presence.** "Incidental presence" means the presence of a regulated metal as an unintended or undesired ingredient of a package or packaging component.

[1995, c. 184, §1 (NEW) .]

2-B. **Intentional introduction.** "Intentional introduction" means the act of deliberately using a regulated metal in the formation of a package or packaging component when its continued presence is desired in the final package or packaging component to provide a specific characteristic, appearance or quality.

The use of a regulated metal as a processing agent or intermediate to impart certain chemical or physical changes during manufacturing, when the incidental retention of a residue of the metal in the final package or packaging component is neither desired nor deliberate, is not considered intentional introduction for the purposes of this chapter.

The use of recycled materials as feedstock for the manufacture of new packaging materials, when a portion of the recycled materials may contain amounts of the regulated metals, is not considered intentional introduction for the purposes of this chapter when the new package or packaging component is in compliance with section 1733.

[1995, c. 184, §1 (NEW) .]

3. **Manufacturer.** "Manufacturer" means any person who manufactures a package or packaging component.

[1989, c. 849, §1 (NEW) .]

4. **Package.** "Package" means a container used in marketing, protecting or handling a product and includes a unit package and a shipping container defined by the American Society for Testing and Materials in its annual book of standards as ASTM, D996. "Package" also includes such unsealed receptacles as carrying cases, crates, cups, pails, rigid foil and other trays, wrappers and wrapping films, bags and tubs.

[1989, c. 849, §1 (NEW) .]

5. **Packaging component.** "Packaging component" means any individual assembled part of a package such as, but not limited to, any interior or exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coatings, closures, inks and labels. Tin-plated steel that meets the American Society for Testing and Materials specification A-623 must be considered as a single package component. Electrogalvanized coated steel and hot-dipped coated galvanized steel that meets the American Society for Testing and Materials specifications A-525 and A-879 must be treated in the same manner as tin-plated steel.

[1995, c. 184, §2 (AMD) .]

6. **Supplier.** "Supplier" means any person, firm or corporation that sells packages or packaging components to a distributor.

[1989, c. 849, §1 (NEW) .]

SECTION HISTORY
1989, c. 849, §1 (NEW). 1995, c. 184, §§1,2 (AMD). 1995, c. 465, §A9 (AMD). 1995, c. 465, §C2 (AFF). 1995, c. 656, §§A7,8 (AMD).

§1733. PROHIBITION; SCHEDULE FOR REMOVAL OF INCIDENTAL AMOUNTS

1. **Prohibition of sale of packaging.** A manufacturer, supplier or distributor may not offer for sale or for promotional purposes a package or packaging component that includes inks, dyes, pigments, adhesives, stabilizers or any other additives to which any lead, cadmium, mercury or hexavalent chromium has been intentionally introduced during manufacturing or distribution. This prohibition does not apply to the incidental presence of any of these elements.

[1989, c. 849, §1 (NEW) .]

2. **Prohibition of sale of product in packaging.** A manufacturer or distributor may not offer for sale or for promotional purposes any product in a package that includes, in the package itself or any packaging components, inks, dyes, pigments, adhesives, stabilizers or any other additives to which any lead, cadmium, mercury or hexavalent chromium has been intentionally introduced during manufacturing or distribution. This prohibition does not apply to the incidental presence of any of these elements.

[1989, c. 849, §1 (NEW) .]

3. **Concentration levels.** The sum of the concentration levels of lead, cadmium, mercury and hexavalent chromium present in any package or packaging component may not exceed:

A. Effective April 1, 1992, 600 parts per million by weight, or 0.06%; [1989, c. 849, §1 (NEW).]

B. Effective April 1, 1993, 250 parts per million by weight, or 0.025%; and [1989, c. 849, §1 (NEW).]

C. Effective April 1, 1994, 100 parts per million by weight, or 0.01%. [1989, c. 849, §1 (NEW).]

[1989, c. 849, §1 (NEW) .]

4. **Substitute materials.** No material used to replace lead, cadmium, mercury or hexavalent chromium in a package or packaging component may be used in a quantity or manner that creates a hazard as great as or greater than the hazard created by the lead, cadmium, mercury or hexavalent chromium.

[1989, c. 849, §1 (NEW) .]

SECTION HISTORY
1989, c. 849, §1 (NEW).

§1734. EXEMPTIONS

All packages and packaging components are subject to the provisions of section 1733 unless: [1989, c. 849, §1 (NEW).]

1. **Manufactured prior to effective date.** The package or packaging component has a code indicating a date of manufacture prior to the effective date of this section;

[1991, c. 177, §1 (AMD); 1991, c. 177, §2 (AFF) .]

2. **Health and safety requirements; feasibility; post-consumer materials.** The manufacturer, supplier or distributor petitions the department for an exemption for a particular package or packaging component and the department grants an exemption for one or more of the following reasons.

A. The package or packaging component contains lead, cadmium, mercury or hexavalent chromium added in the manufacturing, forming, printing or distribution process in order to comply with health or safety requirements of state or federal law. [1989, c. 849, §1 (NEW).]

B. There is no feasible alternative to the use of lead, cadmium, mercury or hexavalent chromium in the package or packaging component. For the purposes of this section, "no feasible alternative" means a use in which the regulated substance is essential to the protection, safe handling or function of the package's contents. [1989, c. 849, §1 (NEW).]

C. The addition of post-consumer materials causes the package or packaging component to exceed the maximum concentration levels set forth in section 1733, subsection 3. [1989, c. 849, §1 (NEW).]

For packages or packaging components exempted under paragraph A or B, a 2-year exemption may be granted and that exemption may be renewed for an additional 2 years. An exemption granted under paragraph C is valid for 6 years;

[1995, c. 656, Pt. A, §9 (AMD) .]

3. **Alcoholic beverages bottled prior to effective date.** The package or packaging component contains an alcoholic beverage bottled prior to April 1, 1992; or

[1995, c. 184, §4 (AMD) .]

4. **Packaging and packaging components; reused.**

[T. 32, §1734 (RP) .]

SECTION HISTORY
1989, c. 849, §1 (NEW). 1991, c. 177, §1 (AMD). 1991, c. 177, §2 (AFF). 1993, c. 310, §A1 (AMD). 1995, c. 184, §§3-5 (AMD). 1995, c. 656, §A9 (AMD). MRSA T.32 ., §1734/4 (AMD).

§1735. CERTIFICATE OF COMPLIANCE

A certificate of compliance is a document developed by a manufacturer and furnished to its purchasers that attests that one or more packages or packaging components meet the standards established in section 1733 or are exempt under the provisions of section 1734. If compliance is achieved under the exemptions provided in section 1734, the certificate must state the specific basis upon which the exemption is claimed. A certificate of compliance must be signed by an authorized official of the manufacturer. A certificate of compliance may cover more than one type of package or packaging component as long as they are separately identified. [1993, c. 310, Pt. A, §2 (AMD).]

1. **New or reformulated packaging.** If the manufacturer reformulates or creates a new package or packaging component, the manufacturer shall furnish its purchasers with an amended or new certificate of compliance for the reformulated or new package or packaging component.

[1993, c. 310, Pt. A, §2 (AMD) .]

2. **Presentation of certificates.** Each manufacturer shall furnish the department, at the department's request, with a copy of any certificate of compliance and each manufacturer or supplier shall furnish, at the department's request, copies of a certificate of compliance for distribution to the public.

[1995, c. 656, Pt. A, §10 (AMD) .]

SECTION HISTORY
1989, c. 849, §1 (NEW). 1993, c. 310, §A2 (AMD). 1995, c. 656, §A10 (AMD).

§1736. ENFORCEMENT AND PENALTIES

1. **Enforcement.** The department shall enforce the provisions of this chapter and may inspect, with the consent of the owner or agent, any property or building to accomplish the objectives of this chapter.

[1995, c. 656, Pt. A, §11 (AMD) .]

2. **Violation.** Any manufacturer or supplier that violates this chapter commits a civil violation for which a forfeiture of not more than $100 may be adjudged. Each package or packaging component in violation constitutes the basis of a separate offense.

[1989, c. 849, §1 (NEW) .]

SECTION HISTORY
1989, c. 849, §1 (NEW). 1995, c. 656, §A11 (AMD).

§1737. RULES

The department shall adopt rules implementing the provisions of this chapter in consultation with the Department of Agriculture, Conservation and Forestry. Rules must be adopted in accordance with the Maine Administrative Procedure Act. No rule adopted pursuant to this chapter may add or remove prohibitions on packaging or packaging components. [1995, c. 656, Pt. A, §12 (AMD); 2011, c. 657, Pt. W, §5 (REV).]

SECTION HISTORY
1989, c. 849, §1 (NEW). 1995, c. 656, §A12 (AMD). 2011, c. 657, Pt. W, §5 (REV).

§1738. PUBLIC ACCESS

A citizen of the State may request in writing from the department a copy of the certificate of compliance for a package or packaging component found in use or for sale in the State. [1995, c. 656, Pt. A, §13 (AMD).]

SECTION HISTORY
1989, c. 849, §1 (NEW). 1995, c. 656, §A13 (AMD).

§1739. EFFECTIVE DATE

This chapter takes effect April 1, 1992. [1989, c. 849, §1 (NEW).]

SECTION HISTORY
1989, c. 849, §1 (NEW).

Chapter 27: MANUFACTURERS AND BOTTLERS OF NONALCOHOLIC BEVERAGES

Subchapter 1: GENERAL PROVISIONS

§1751. DEFINITIONS

As used in this chapter, the following terms shall have the following meanings:

1. **Beverage.** "Beverage" means any non-alcoholic flavored carbonated drink, soda water, non-alcoholic still drinks, diluted fruit or vegetable juices whether sweetened or unsweetened, seasoned or unseasoned with salt or spice, or still or carbonated mineral waters used as a drink. The term shall not include undiluted concentrated fruit or vegetable juice nor such juice when reconstituted to its original volume.

2. **Beverage plant.** "Beverage plant" means any place, premise or establishment, or any part thereof, where beverages are assembled, processed, manufactured, bottled or converted into form for distribution or sale and such rooms or premises where beverage product manufacturing equipment and containers are washed, sanitized and stored.

3. **Bottling.** "Bottling" means filling, capping, packaging and enclosing in bottles or other containers.

4. **Non-nutritive sweeteners.** "Non-nutritive sweeteners" mean saccharin, saccharin salt, sodium cyclamate, calcium cyclamate and such other artificial sweetening agents as may be permitted in regulations promulgated by the Commissioner of Agriculture, Conservation and Forestry.

[1979, c. 731, §19 (AMD); 2011, c. 682, Pt. W, §6 (REV) .]

5. **Sweetening ingredient.** "Sweetening ingredient" means cane sugar, beet sugar, dextrose, corn syrup, in liquid or dried form, honey or any syrup made from any such sugars or any combination of such sugars.

SECTION HISTORY
1979, c. 731, §19 (AMD). 2011, c. 657, Pt. W, §6 (REV).

§1752. PENALTIES

Any person, firm or corporation who shall violate this chapter, or shall neglect or refuse to comply with the provisions thereof, shall be punished by a fine of not more than $100 for the first offense, and by a fine of not more than $200 for each subsequent offense.

Subchapter 2: COMMISSIONER OF AGRICULTURE

§1801. RULES AND REGULATIONS

The Commissioner of Agriculture, Conservation and Forestry shall, in a manner consistent with the Maine Administrative Procedure Act, after investigation, adopt and promulgate rules and regulations to supplement and give full effect to this chapter. Such rules and regulations shall establish sanitary regulations for manufacture and bottling of beverages, including the construction, sanitary conditions of buildings, grounds and equipment, sanitary conditions of persons in direct contact with the beverage or its ingredients. Such rules and regulations shall, among other things, establish standards of identity and composition, including a maximum standard of content for any substance that may be deleterious and minimum standards of composition for the proper enforcement of this chapter and for the protection of the public health and welfare. Such rules and regulations shall have the force of law. [1979, c. 731, §19 (AMD); 2011, c. 657, Pt. W, §6 (REV).]

It shall be unlawful to sell, offer for sale or have in possession with intent to sell any beverage not manufactured or bottled in a beverage plant located in this State and licensed by the commissioner or located without this State and approved by the commissioner pursuant to section 1851.

Beverages manufactured or bottled in a beverage plant not so licensed or approved shall be deemed to be a misbranded food within the meaning of Title 22, section 2157.

SECTION HISTORY
1977, c. 694, §581 (AMD). 1979, c. 731, §19 (AMD). 2011, c. 657, Pt. W, §6 (REV).

§1802. REVOCATION OF LICENSES

The Commissioner of Agriculture, Conservation and Forestry shall have the power, in a manner consistent with the Maine Administrative Procedure Act, to refuse to renew, and the District Court, upon complaint of the commissioner or the Attorney General shall have the power, in a manner consistent with the Maine Administrative Procedure Act, to revoke or suspend any license issued under section 1851 when it is determined that any of the provisions of this chapter, or rules or regulations promulgated thereunder, have been violated. Any person, firm or corporation whose license has been so revoked or suspended shall discontinue the manufacture and sale within the State of beverages until said chapter has been complied with and a new license issued, or the suspension removed. The District Court may revoke or suspend such license temporarily until there is a compliance with this chapter or permanently for the unexpired period of such license. [1979, c. 731, §19 (AMD); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF); 2011, c. 657, Pt. W, §6 (REV).]

SECTION HISTORY
1977, c. 694, §582 (AMD). 1979, c. 731, §19 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2011, c. 657, Pt. W, §6 (REV).

§1803. -- NOTICE; PROCEDURE; APPEALS

(REPEALED)

SECTION HISTORY
1977, c. 694, §583 (RP).

§1804. DISPOSAL OF FINES AND FEES

All fees received by the Commissioner of Agriculture, Conservation and Forestry under this chapter, and all money and fines received by him under this chapter, by virtue of Title 7, sections 13 and 15, shall be paid by him to the Treasurer of State for deposit in the General Fund. [1979, c. 731, §19 (AMD); 2011, c. 657, Pt. W, §6 (REV).]

SECTION HISTORY
1979, c. 731, §19 (AMD). 2011, c. 657, Pt. W, §6 (REV).

Subchapter 3: LICENSING AND OPERATION

§1851. LICENSE REQUIRED; FEE; EXPIRATION AND RENEWAL

No person within this State may manufacture or bottle for sale any beverage without first having filed with the Commissioner of Agriculture, Conservation and Forestry an application for a license accompanied with the fee specified in this section and having been issued a license to operate a beverage plant. Upon receipt of such application containing information required by the commissioner and being satisfied that the

applicant has complied with this chapter and rules adopted under this chapter, the commissioner shall issue the applicant a license to manufacture and sell beverages. [1993, c. 410, Pt. S, §4 (AMD); 2011, c. 657, Pt. W, §6 (REV).]

No person manufacturing or bottling any beverage outside of the State for retail sale within the State may sell or offer to sell the same within the State unless that person has made application and secured a license to sell beverages from the commissioner upon the payment of the fee specified in this section. The commissioner may issue a license to sell beverages manufactured or bottled outside of the State upon being satisfied from inspection by an inspector of the department or from a statement from the agency having enforcement of the beverage law in the state where the beverage establishment is located, that the establishment complies with the requirements of this chapter and rules adopted under this chapter, and upon the commissioner's approval of the establishment on the basis of the inspection or statement. [1993, c. 410, Pt. S, §4 (AMD).]

Beginning August 1, 2000, each license or license renewal issued expires on the 31st day of December following the date of issuance or on the date provided by the provisions of the Maine Administrative Procedure Act as to license expiration, whichever date is later, unless sooner revoked as provided in section 1802, and must be renewed annually thereafter subject always to such revocation. When an initial license is issued or when a license is renewed between August 1, 2000 and December 31, 2001, the license fee is prorated based on the number of months the license is valid and the annual license fee. [1999, c. 598, §2 (AMD); 1999, c. 598, §3 (AFF).]

The fee for a license issued under this section is based on the number of persons employed by the manufacturer or bottler. The commissioner shall adopt rules to establish a schedule of fees for licenses issued under this subchapter. Fees must be appropriate to the size of the beverage plant. Notwithstanding Title 5, section 8071, subsection 3, paragraph B, rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2007, c. 539, Pt. GGGG, §8 (AMD).]

SECTION HISTORY
1977, c. 694, §584 (AMD). 1993, c. 410, §S4 (AMD). 1999, c. 598, §2 (AMD). 1999, c. 598, §4 (AFF). 2007, c. 539, Pt. GGGG, §8 (AMD). 2011, c. 657, Pt. W, §6 (REV).

§1852. PLANT REQUIREMENTS

Every beverage plant used for the preparation, manufacture and bottling of any beverage shall be adequately lighted and ventilated and all floors shall be constructed of cement, concrete or tile laid in cement or other material impervious to water, and shall have sufficient pitch to insure drainage; walls and ceilings shall be varnished or painted in light color and kept clean; doors, windows and other openings of any room in which beverages or the ingredients of such beverages shall be prepared shall be screened. Wash basins, sinks and toilets shall be provided for employees. No toilet shall open directly into any room used for the preparation or bottling of any beverage. The syrup room shall be separately enclosed, well ventilated and lighted, provided with sinks and taps for hot and cold water, thoroughly protected against vermin, flies, dirt and dust and so constructed as to be easily cleaned.

Every beverage plant shall be equipped with mechanical container-washing apparatus and machinery, and with mechanical and sanitary machines for bottling and for carbonating, if carbonated beverages are manufactured.

All machines, apparatus, vessels, fountains, tanks or other equipment, caps and ingredients used in the manufacture of beverages shall be kept in a sanitary condition. No vessels or tanks shall be used for syrup mixing or for storing such mixed syrup unless they are of glass or stainless steel, porcelain lined, block tin lined or made of some other suitable impervious material.

Beverage plants shall be located in buildings so constructed that the bottling operation is performed in separate rooms, but such construction shall allow for modern practices in the loading or unloading of trucks in the same rooms, and for modern practices in the use of conveyor systems or other means of mechanical handling.

§1853. LABELING

Whenever artificial colors or flavors are used in the manufacture of a beverage, the bottle or other container or the crown thereof shall be distinctly labeled "Artificially colored and flavored." Whenever artificial coal tar colors are used, nothing but certified colors as approved by the United States Food and Drug Administration shall be allowed.

All open containers or receptacles that contain artificial color or artificial flavor shall be so labeled, and said labels shall be prominently displayed on container or suitable location so as to be likely to be read by the purchaser.

§1854. CLEANING OF CONTAINERS

All reusable glass containers used in the manufacture of beverages shall, before being filled or refilled, be thoroughly cleaned and sanitized by washing in an automatic washing machine in a solution of not less than 3% caustic alkali, at a temperature not lower than 110° Fahrenheit to be followed by a rinsing in potable water. All other reusable and all single service containers shall be cleaned and sanitized before being filled or refilled by suitable means approved by the Commissioner of Agriculture, Conservation and Forestry.
[1977, c. 696, §242 (AMD); 1979, c. 731, §19 (AMD); 2011, c. 657, Pt. W, §6 (REV).]

SECTION HISTORY
1977, c. 696, §242 (AMD). 1979, c. 731, §19 (AMD). 2011, c. 657, Pt. W, §6 (REV).

Chapter 28: MANUFACTURERS, DISTRIBUTORS AND DEALERS OF BEVERAGE CONTAINERS

§1861. PURPOSE

1. **Legislative findings.** The Legislature finds that beverage containers are a major source of nondegradable litter and solid waste in this State and that the collection and disposal of this litter and solid waste constitutes a great financial burden for the citizens of this State.

[1975, c. 739, §16 (NEW) .]

2. **Intent.** It is the intent of the Legislature to create incentives for the manufacturers, distributors, dealers and consumers of beverage containers to reuse or recycle beverage containers thereby removing the blight on the landscape caused by the disposal of these containers on the highways and lands of the State and reducing the increasing costs of litter collection and municipal solid waste disposal.

[2001, c. 661, §1 (AMD) .]

SECTION HISTORY
1975, c. 739, §16 (NEW). 1977, c. 381, §1 (AMD). 2001, c. 661, §1 (AMD).

§1862. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following words and phrases shall have the following meanings. [1975, c. 739, §16 (NEW).]

1. **Beverage.** "Beverage" means beer, ale or other drink produced by fermenting malt, spirits, wine, hard cider, wine coolers, soda or noncarbonated water and all nonalcoholic carbonated or noncarbonated drinks in liquid form and intended for internal human consumption, except for unflavored rice milk, unflavored soymilk, milk and dairy-derived products.

A. [1989, c. 585, Pt. D, §2 (RP); 1989, c. 869, Pt. C, §12 (AFF).]

[2009, c. 110, §1 (AMD) .]

2. **Beverage container.** "Beverage container" means a bottle, can, jar or other container made of glass, metal or plastic that has been sealed by a manufacturer and at the time of sale contains 4 liters or less of a beverage. This term does not include a container composed, in whole or in part, of aluminum and plastic or aluminum and paper in combination as long as the aluminum content represents 10% or less of the unfilled container weight, the container materials represent 5% or less of the total weight of the container and its contents, and the container is filled with a nonalcoholic beverage.

[1993, c. 591, §1 (AMD); 1993, c. 591, §5 (AFF) .]

2-A. **Commingling agreement.** "Commingling agreement" means an agreement between 2 or more initiators of deposit allowing the beverage containers for which they have initiated deposits to be commingled by dealers and redemption centers, as described in section 1866-D.

[2003, c. 499, §1 (NEW) .]

3. **Commissioner.** "Commissioner" means the Commissioner of Agriculture, Conservation and Forestry.

[1979, c. 731, §19 (AMD); 2011, c. 657, Pt. W, §6 (REV) .]

4. **Consumer.** "Consumer" means an individual who purchases a beverage in a beverage container for use or consumption.

[1975, c. 739, §16 (NEW) .]

5. **Dealer.** "Dealer" means a person who sells, offers to sell or engages in the sale of beverages in beverage containers to a consumer, including, but not limited to, an operator of a vending machine containing beverages in beverage containers.

[1975, c. 739, §16 (NEW) .]

6. **Department.** "Department" means the Department of Agriculture, Conservation and Forestry.

[1979, c. 731, §19 (AMD); 2011, c. 657, Pt. W, §5 (REV) .]

7. **Distributor.** "Distributor" means a person who engages in the sale of beverages in beverage containers to a dealer in this State and includes a manufacturer who engages in such sales.

[1975, c. 739, §16 (NEW) .]

7-A. **Hard cider.** "Hard cider" means a beverage produced by fermentation of the juice of fruit, including, but not limited to, flavored, sparkling or carbonated cider that contains not less than 1/2 of 1% alcohol by volume and not more than 7% alcohol by volume.

[2009, c. 110, §2 (NEW) .]

8. **In this State.** "In this State" means within the exterior limits of the State of Maine and includes all territory within these limits owned by or ceded to the United States of America.

[1975, c. 739, §16 (NEW) .]

8-A. **Initiator of deposit or initiator.** "Initiator of deposit" or "initiator" means a manufacturer, distributor or other person who initiates a deposit on a beverage container under section 1863-A.

[2003, c. 499, §2 (AMD) .]

8-B. **Local redemption center.** "Local redemption center" means a place of business that deals in acceptance of empty returnable beverage containers from either consumers or from dealers, or both, and that must be licensed under section 1871-A.

[2001, c. 661, §2 (NEW) .]

9. **Manufacturer.** "Manufacturer" means a person who bottles, cans or otherwise places beverages in beverage containers for sale to distributors or dealers.

[1975, c. 739, §16 (NEW) .]

9-A. **Nonrefillable.** "Nonrefillable" means a beverage container which, after being used by a consumer, is not to be reused as a beverage container by a manufacturer.

[1979, c. 462, §1 (NEW) .]

10. **Operator of a vending machine.** "Operator of a vending machine" means an owner of a vending machine, the person who refills it, or the owner or lessee of the property upon which it is located.

[1975, c. 739, §16 (NEW) .]

11. **Person.** "Person" means an individual, partnership, corporation or other legal entity.

[1975, c. 739, §16 (NEW) .]

12. **Premises.** "Premises" means the property of the dealer or his lessor on which the sale is made.

[1975, c. 739, §16 (NEW) .]

12-A. **Refillable.** "Refillable" means a beverage container which, after being used by a consumer, is to be reused as a beverage container at least 5 times by a manufacturer.

[1979, c. 462, §2 (NEW) .]

12-B. **Spirits.** "Spirits" has the same meaning as in Title 28-A, section 2.

[1989, c. 585, Pt. D, §§3, 11 (NEW); 1989, c. 869, Pt. C, §12 (AFF) .]

12-C. **Unflavored soymilk.** "Unflavored soymilk" means any liquid containing no additional flavoring ingredients and intended for internal human consumption, the primary protein source of which is soy protein derived from whole soybeans, isolated soy protein, soy protein concentrate, soy flour, spray-dried tofu or spray-dried soymilk.

[1991, c. 304, §2 (NEW) .]

12-D. **Rice milk.** "Rice milk" means any liquid intended for internal human consumption of which the primary protein source is rice protein derived from partially milled brown rice.

[1993, c. 77, §2 (NEW) .]

12-E. **Reverse vending machine.** "Reverse vending machine" means an automated device that uses a laser scanner and microprocessor to accurately recognize the universal product code on containers and to accumulate information regarding containers redeemed, enabling the reverse vending machine to accept containers from redeemers and to issue script for the containers' refund value. "Reverse vending machine" does not include a hand scanner or other similar device.

[2007, c. 299, §1 (AMD) .]

13. **Use or consumption.** "Use or consumption" means the exercise of any right or power over a beverage incident to the ownership thereof, other than the sale, storage or retention for the purpose of sale of a beverage.

[1975, c. 739, §16 (NEW) .]

14. **Wine.** "Wine" has the same meaning as in Title 28-A, section 2, except, that for the purposes of this chapter, "wine" does not include wine coolers.

[1989, c. 585, Pt. D, §§3, 11 (NEW); 1989, c. 869, Pt. C, §12 (AFF) .]

15. **Wine cooler.** "Wine cooler" means a beverage of less than 8% alcohol content by volume consisting of wine and:

A. Plain, sparkling or carbonated water; and [1989, c. 585, Pt. D, §§3, 11 (NEW); 1989, c. 869, Pt. C, §12 (AFF).]

B. Any one or more of the following:

(1) Fruit juices;

(2) Fruit adjuncts;

(3) Artificial or natural flavors or flavorings;

(4) Preservatives;

(5) Coloring; or

(6) Any other natural or artificial blending material. [1989, c. 585, Pt. D, §§3, 11 (NEW); 1989, c. 869, Pt. C, §12 (AFF).]

[1989, c. 585, Pt. D, §§3, 11 (NEW); 1989, c. 869, Pt. C, §12 (AFF) .]

SECTION HISTORY
1975, c. 739, §16 (NEW). 1979, c. 462, §§1,2 (AMD). 1987, c. 275, §§1,2 (AMD). 1987, c. 543, §§1,2 (AMD). 1987, c. 649, §1 (AMD). 1989, c. 585, §§D2-4,D11 (AMD). 1989, c. 869, §C12 (AFF). 1991, c. 304, §§1,2 (AMD). 1993, c. 72, §1 (AMD). 1993, c. 77, §§1,2 (AMD). 1993, c. 591, §1 (AMD). 1993, c. 591, §5 (AFF). 2001, c. 661, §2 (AMD). 2003, c. 499, §§1-3 (AMD). 2007, c. 299, §1 (AMD). 2009, c. 110, §§1, 2 (AMD). 2011, c. 657, Pt. W, §§5, 6 (REV).

§1863. REFUND VALUE

(REPEALED)

SECTION HISTORY
1975, c. 739, §16 (NEW). 1979, c. 462, §3 (AMD). 1989, c. 585, §§D5,D11 (RPR). 1989, c. 869, §§C2,12,15 (AMD). 1991, c. 528, §R1 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §R1 (AMD). 1991, c. 819, §2 (RP).

§1863-A. REFUND VALUE

To encourage container reuse and recycling, every beverage container sold or offered for sale to a consumer in this State must have a deposit and refund value. The deposit and refund value are determined according to the provisions of this section. [1991, c. 819, §3 (NEW).]

1. **Refillable containers.** For refillable beverage containers, except wine and spirits containers, the manufacturer shall determine the deposit and refund value according to the type, kind and size of the beverage container. The deposit and refund value may not be less than 5¢.

[1991, c. 819, §3 (NEW) .]

2. **Nonrefillable containers; exclusive distributorships.** For nonrefillable beverage containers, except wine and spirits containers, sold through geographically exclusive distributorships, the distributor shall determine and initiate the deposit and refund value according to the type, kind and size of the beverage container. The deposit and refund value must not be less than 5¢.

[1991, c. 819, §3 (NEW) .]

3. **Nonrefillable containers; nonexclusive distributorships.** For nonrefillable beverage containers, except wine and spirits containers, not sold through geographically exclusive distributorships, the deposit and refund value may not be less than 5¢.

[1991, c. 819, §3 (NEW) .]

4. **Wine and spirits containers.** For wine and spirits containers of greater than 50 milliliters, the refund value may not be less than 15¢. On January 1, 1993, the department shall issue a finding on the percentages of wine containers and spirits containers returned for deposit. If the department finds the return rate of wine containers was less than 60% during the year ending September 1992, then, on July 1, 1993, the refund value on wine containers may not be less than 25¢. If the department finds the return rate of spirits containers was less than 60% during the year ending September 1992, then, on July 1, 1993, the refund value of spirits containers may not be less than 25¢.

[1991, c. 819, §3 (NEW) .]

SECTION HISTORY
1991, c. 819, §3 (NEW).

§1863-B. OWNERSHIP OF DEPOSITS

(REPEALED)

SECTION HISTORY
1991, c. 819, §3 (NEW). 1995, c. 395, §P11 (AFF). 1995, c. 395, §P1 (RP).

§1864. DEALER AS DISTRIBUTOR

Whenever a dealer or group of dealers receives a shipment or consignment of, or in any other manner acquires, beverage containers outside the State for sale to consumers in the State, such dealer or dealers shall comply with this chapter as if they were distributors, as well as dealers. [1975, c. 739, §16 (NEW).]

SECTION HISTORY
1975, c. 739, §16 (NEW).

§1865. LABELS; STAMPS; BRAND NAMES

1. **Labels.** Except as provided under subsections 1-A and 2, the refund value and the word "Maine" or the abbreviation "ME" must be clearly indicated on every refundable beverage container sold or offered for sale by a dealer in this State, by embossing, stamping, labeling or other method of secure attachment to the beverage container. The refund value may not be indicated on the bottom of the container. Metal beverage containers must be embossed or stamped on the top of the container.

[1991, c. 491, §1 (AMD) .]

1-A. **Labels; nonrefillable containers; nonexclusive distributorships.** With respect to nonrefillable beverage containers the deposits for which are initiated pursuant to section 1863-A, subsection 3, the refund value and the word "Maine" or the abbreviation "ME" must be clearly indicated on every refundable beverage container sold or offered for sale by a dealer in this State, by permanently embossing or permanently stamping the beverage containers, except in instances when the initiator of the deposit has specific permission

from the department to use stickers or similar devices. The refund value may not be indicated on the bottom of the container. Metal beverage containers must be permanently embossed or permanently stamped on the tops of the containers.

[1991, c. 819, §4 (AMD) .]

1-B. **Labels; nonrefillable containers; exclusive distributorships.** Notwithstanding subsection 1 and with respect to nonrefillable beverage containers, for the deposits that are initiated pursuant to section 1863-A, subsection 2, the refund value and the word "Maine" or the abbreviation "ME" may be clearly indicated on refundable beverage containers sold or offered for sale by a dealer in this State by use of stickers or similar devices if those containers are not otherwise marked in accordance with subsection 1. A redemption center shall accept containers identified by stickers in accordance with this subsection or by embossing or stamping in accordance with subsection 1.

[1995, c. 437, §1 (NEW) .]

2. **Brand name.** Refillable glass beverage containers of carbonated beverages, for which the deposit is initiated under section 1863-A, subsection 1, that have a refund value of not less than 5¢ and a brand name permanently marked on the container are not required to comply with subsection 1. The exception provided by this subsection does not apply to glass beverage containers that contain spirits, wine or malt liquor as those terms are defined by Title 28-A, section 2.

[1991, c. 819, §5 (RPR) .]

3. **Label registration.** An initiator of deposit shall register the container label of any beverage offered for sale in the State on which it initiates a deposit. Registration must be on forms or in an electronic format provided by the department and must include the universal product code for each combination of beverage and container manufactured. The initiator of deposit shall renew a label registration annually and whenever that label is revised by altering the universal product code or whenever the container on which it appears is changed in size, composition or glass color. The initiator of deposit shall also include as part of the registration the method of collection for that type of container, identification of a collection agent, identification of all of the parties to a commingling agreement that applies to the container and proof of the collection agreement. The department may charge a fee for registration and registration renewals under this subsection. Rules adopted pursuant to this subsection that establish fees are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A and subject to review by the joint standing committee of the Legislature having jurisdiction over environmental and natural resources matters.

[2011, c. 429, §1 (AMD) .]

4. **Removal of product.** A product that is sold or distributed in the State that is not in compliance with the initiator of deposit or the labeling registration requirements established in this section may be removed from sale by the department.

[2007, c. 299, §2 (NEW) .]

SECTION HISTORY
1975, c. 739, §16 (NEW). 1989, c. 427, §§1,2 (AMD). 1989, c. 817, §3 (AMD). 1989, c. 869, §§C3,15 (AMD). 1991, c. 491, §§1,2 (AMD). 1991, c. 819, §§4,5 (AMD). 1995, c. 437, §1 (AMD). 2001, c. 661, §3 (AMD). 2003, c. 499, §4 (AMD). 2007, c. 299, §2 (AMD). 2011, c. 429, §1 (AMD).

§1866. APPLICATION

1. **Dealer acceptance.** Except as provided in this section, a dealer may not refuse to accept from any consumer or other person not a dealer any empty, unbroken and reasonably clean beverage container of the kind, size and brand sold by the dealer, or refuse to pay in cash the refund value of the returned beverage container as established by section 1863-A. This section does not require an operator of a vending machine to maintain a person to accept returned beverage containers on the premises where the vending machine is located.

[1991, c. 819, §6 (AMD) .]

2. **Permissive refusal by dealer.** A dealer may refuse to accept from a consumer or other person and to pay the refund value on any beverage container, if the place of business of the dealer and the kind, size and brand of beverage container are included in an order of the department approving a redemption center under section 1867.

[1975, c. 739, §16 (NEW) .]

2-A. **Limitation or number of returnables accepted.** A dealer may limit the total number of beverage containers which he will accept from any one consumer or other person in any one business day to 240 containers, or any other number greater than 240.

[1979, c. 450, (NEW) .]

2-B. **Limitation on hours for returning containers.** A dealer may refuse to accept beverage containers during no more than 3 hours in any one business day. If a dealer refuses to accept containers under this subsection, the hours during which he will not accept containers shall be conspicuously posted.

[1979, c. 456, (NEW) .]

3. **Distributor acceptance.** A distributor may not refuse to accept from any dealer or local redemption center any empty, unbroken and reasonably clean beverage container or any beverage container that has been processed through an approved reverse vending machine that meets the requirements of rules adopted by the department pursuant to this chapter of the kind, size and brand sold by the distributor or refuse to pay to the dealer or local redemption center the refund value of a beverage container as established by section 1863-A.

[2003, c. 499, §5 (AMD) .]

3-A. **Obligation to preserve recycling value.** Notwithstanding subsection 5, a distributor or its agent may refuse to accept, or pay the refund value and handling costs to a dealer, redemption center or other person for, a beverage container that has been processed by a reverse vending machine in a way that has reduced the recycling value of the container below current market value. This subsection may not be interpreted to prohibit a written processing agreement between a distributor and a dealer or redemption center and does not relieve a distributor of its obligation under subsection 5 to accept empty, unbroken and reasonably clean beverage containers. The department shall adopt rules to establish the recycling value of beverage containers under this subsection and the rules may authorize the use of a 3rd-party vendor to determine if a beverage container has been processed by a reverse vending machine in a manner that has reduced the recycling value below current market value. The rules must outline the method of allocating among the parties involved the payment for 3rd-party vendor costs. Rules adopted under this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

[2007, c. 299, §3 (NEW) .]

4. **Reimbursement of handling costs.** Reimbursement of handling costs is governed by this subsection.

A. In addition to the payment of the refund value, the initiator of the deposit under section 1863-A, subsections 1, 2 and 4 shall reimburse the dealer or local redemption center for the cost of handling beverage containers subject to section 1863-A, in an amount that equals at least 3¢ per returned container for containers picked up by the initiator before March 1, 2004, at least 3 1/2¢ for containers picked up on or after March 1, 2004 and before March 1, 2010 and at least 4¢ for containers picked up on or after March 1, 2010. The initiator of the deposit may reimburse the dealer or local redemption center directly or indirectly through a party with which it has entered into a commingling agreement. [2009, c. 405, §1 (AMD).]

B. In addition to the payment of the refund value, the initiator of the deposit under section 1863-A, subsection 3 shall reimburse the dealer or local redemption center for the cost of handling beverage containers subject to section 1863-A in an amount that equals at least 3¢ per returned container for containers picked up by the initiator before March 1, 2004, at least 3 1/2¢ for containers picked up on or after March 1, 2004 and before March 1, 2010 and at least 4¢ for containers picked up on or after March 1, 2010. The initiator of the deposit may reimburse the dealer or local redemption center directly or indirectly through a contracted agent or through a party with which it has entered into a commingling agreement. [2009, c. 405, §2 (AMD).]

C. The reimbursement that the initiator of the deposit is obligated to pay the dealer or redemption center pursuant to paragraph A or B must be reduced by 1/2¢ for any returned container that is subject to a qualified commingling agreement that allows the dealer or redemption center to commingle beverage containers of like product group, material and size. A commingling agreement is qualified for purposes of this paragraph if the department determines that 50% or more of the beverage containers of like product group, material and size for which the deposits are being initiated in the State are covered by the commingling agreement or that the initiators of deposit covered by the commingling agreement are initiators of deposit for wine containers who each sell no more than 100,000 gallons of wine or 500,000 beverage containers that contain wine in a calendar year. Once the initiator of deposit has established a qualified commingling agreement for containers of a like product group, material and size, the department shall allow additional brands to be included from a different product group if they are of like material. The State, through the Department of Administrative and Financial Services, Bureau of Alcoholic Beverages and Lottery Operations, shall make every reasonable effort to enter into a qualified commingling agreement under this paragraph with every other initiator of deposit for beverage containers that are of like product group, size and material as the beverage containers for which the State is the initiator of deposit. [2011, c. 429, §2 (AMD); 2011, c. 429, §9 (AFF).]

D. Paragraphs A, B and C of this subsection do not apply to a brewer who annually produces no more than 50,000 gallons of its product or a bottler of water who annually sells no more than 250,000 containers each containing no more than one gallon of its product. In addition to the payment of the refund value, an initiator of deposit under section 1863-A, subsections 1 to 4 who is also a brewer who annually produces no more than 50,000 gallons of its product or a bottler of water who annually sells no more than 250,000 containers each containing no more than one gallon of its product shall reimburse the dealer or local redemption center for the cost of handling beverage containers subject to section 1863-A in an amount that equals at least 3¢ per returned container. [2009, c. 405, §3 (AMD).]

E. Notwithstanding provisions of this subsection to the contrary, if a commingling agreement for a product group was filed with the department by March 1, 2004, an initiator of deposit, whether or not a party to that agreement, is not required to pay the 1/2¢ handling fee increase required by this subsection until July 1, 2004 for beverage containers in that product group picked up by the initiator between March 1, 2004 and July 1, 2004. Beginning July 1, 2004, an initiator of deposit shall pay the 1/2¢ handling fee increase for beverage containers in that product group picked up by the initiator between March 1, 2004 and July 1, 2004 that are not covered by a qualified commingling agreement as of July 1, 2004. [2003, c. 700, §1 (NEW); 2003, c. 700, §6 (AFF).]

[2011, c. 429, §2 (AMD); 2011, c. 429, §9 (AFF) .]

5. **Obligation to pick up containers.** The obligation to pick up beverage containers subject to this chapter is determined as follows.

A. A distributor that initiates the deposit under section 1863-A, subsection 2 or 4 has the obligation to pick up any empty, unbroken and reasonably clean beverage containers of the particular kind, size and brand sold by the distributor from dealers to whom that distributor has sold those beverages and from licensed redemption centers designated to serve those dealers pursuant to an order entered under section 1867. A distributor that, within this State, sells beverages under a particular label exclusively to one dealer, which dealer offers those labeled beverages for sale at retail exclusively at the dealer's establishment, shall pick up any empty, unbroken and reasonably clean beverage containers of the kind, size and brand sold by the distributor to the dealer only from those licensed redemption centers that serve the various establishments of the dealer, under an order entered under section 1867. A dealer that manufactures its own beverages for exclusive sale by that dealer at retail has the obligation of a distributor under this section. The commissioner may establish by rule, in accordance with the Maine Administrative Procedure Act, criteria prescribing the manner in which distributors shall fulfill the obligations imposed by this paragraph. The rules may establish a minimum number or value of containers below which a distributor is not required to respond to a request to pick up empty containers. Any rules promulgated under this paragraph must allocate the burdens associated with the handling, storage and transportation of empty containers to prevent unreasonable financial or other hardship. [1991, c. 819, §8 (AMD).]

B. The initiator of the deposit under section 1863-A, subsection 3 has the obligation to pick up any empty, unbroken and reasonably clean beverage containers of the particular kind, size and brand sold by the initiator from dealers to whom a distributor has sold those beverages and from licensed redemption centers designated to serve those dealers pursuant to an order entered under section 1867. The obligation may be fulfilled by the initiator directly or indirectly through a contracted agent. [1991, c. 819, §8 (AMD).]

C. An initiator of the deposit under section 1863-A, subsection 2, 3 or 4 has the obligation to pick up any empty, unbroken and reasonably clean beverage containers that are commingled pursuant to a commingling agreement along with any beverage containers that the initiator is otherwise obligated to pick up pursuant to paragraphs A and B. [2003, c. 499, §7 (NEW).]

D. The initiator of deposit or initiators of deposit who are members of a commingling agreement have the obligation under this subsection to pick up empty, unbroken and reasonably clean beverage containers of the particular kind, size and brand sold by the initiator from dealers to whom a distributor has sold those beverages and from licensed redemption centers designated to serve those dealers every 15 days. The initiator of deposit or initiators of deposit who are members of a commingling agreement have the obligation to make additional pickups when a redemption center has collected 10,000 beverage containers from that initiator of deposit or from the initiators of deposit who are members of a commingling agreement. [2013, c. 275, §1 (NEW).]

The obligation of the initiator of the deposit under this subsection may be fulfilled by the initiator directly or through a party with which it has entered into a commingling agreement. A contracted agent hired to pick up beverage containers for one or more initiators of deposit is deemed to have made a pickup at a redemption center for those initiators of deposit when it picks up beverage containers belonging to those initiators of deposit.

[2013, c. 275, §1 (AMD) .]

5-A. **Plastic bags.** A dealer or redemption center has an obligation to pick up plastic bags that are used by that dealer or redemption center to contain beverage containers. Plastic bags used by a dealer or redemption center and the cost allocation of these bags must conform to rules adopted by the department concerning size and gauge. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2009, c. 405, §4 (NEW) .]

6. **Distributors reports and payments.**

[1991, c. 528, Pt. R, §2 (RP); 1991, c. 528, Pt. RRR, (AFF); 1991, c. 591, Pt. R, §2 (RP) .]

7. **Deposit transaction account.**

[1995, c. 395, Pt. P, §11 (AFF); 1995, c. 395, Pt. P, §2 (RP) .]

8. **Application to containers originally sold in the State.** The obligations to accept or take empty beverage containers and to pay the refund value and handling fees for such containers as described in subsections 1, 2, 3, 4 and 5 apply only to containers originally sold in this State as filled beverage containers. A person who tenders to a dealer, distributor, redemption center or bottler more than 48 empty beverage containers that the person knows or has reason to know were not originally sold in this State as filled beverage containers is subject to the enforcement action and civil penalties set forth in this subsection. At each location where customers tender containers for redemption, dealers and redemption centers must conspicuously display a sign in letters that are at least one inch in height with the following information: "WARNING: Persons tendering containers for redemption that were not originally purchased in this State may be subject to a fine of the greater of $100 per container or $25,000 for each tender. (32 MRSA Section 1866)." A person who violates the provisions of this subsection is subject to a civil penalty of the greater of $100 for each container or $25,000 for each tender of containers.

[1995, c. 85, §1 (AMD) .]

9. **License revocation.** The department may revoke the license of a dealer or redemption center that has been adjudged to have committed a violation of this section.

[2007, c. 299, §4 (NEW) .]

10. **Bulk redemption.** In order to prevent fraud from the redemption of beverage containers not originally sold in this State, this subsection governs the redemption of more than 2,500 beverage containers.

A. A person tendering for redemption more than 2,500 beverage containers at one time to a dealer or redemption center must provide to the dealer or redemption center that person's name and address and the license plate number of the vehicle used to transport the beverage containers. The dealer or redemption center redeeming these beverage containers shall forward that information to the department within 10 days, and the information must be kept on file for a minimum of 12 months. [2009, c. 405, §5 (NEW).]

B. After complying at least once with the requirements of paragraph A, a person need not comply with paragraph A each subsequent time that person tenders to a dealer or redemption center for redemption more than 2,500 beverage containers if:

(1) All of the containers were collected at one location in this State;

(2) All proceeds of the refund value benefit a nonprofit organization that has been determined by the United States Internal Revenue Service to be exempt from taxation under the United States Internal Revenue Code, Section 501(c)(3); and

(3) The person tendering the containers for redemption signs a declaration indicating the person's name, the address of the collection point and the name of the organization or organizations that will receive the refund value. [2009, c. 405, §5 (NEW).]

[2009, c. 405, §5 (NEW) .]

11. **Private right of action; containers not originally sold in the State.** An initiator of deposit may maintain a civil action in Superior Court against a person, other than a local redemption center licensed in accordance with section 1871-A, that tenders to a redemption center or retailer more than 48 empty beverage containers that the person knows or has reason to know were not originally sold in this State as filled beverage containers. If the initiator of deposit prevails in any action, the initiator of deposit is entitled to an award of reasonable attorney's fees and court costs, including expert witness fees.

[2011, c. 429, §3 (NEW) .]

SECTION HISTORY
1975, c. 739, §16 (NEW). 1979, c. 450, (AMD). 1979, c. 456, (AMD). 1979, c. 735, (AMD). 1987, c. 722, (AMD). 1989, c. 470, §§1,3 (AMD). 1989, c. 585, §§D6,D11 (AMD). 1989, c. 869, §§C4,5,12,15 (AMD). 1991, c. 528, §§R2,3 (AMD). 1991, c. 528, §§R18,RRR (AFF). 1991, c. 591, §§R2,3 (AMD). 1991, c. 591, §R18 (AFF). 1991, c. 819, §§6-9 (AMD). 1993, c. 703, §1 (AMD). 1995, c. 85, §1 (AMD). 1995, c. 395, §P2 (AMD). 1995, c. 395, §P11 (AFF). RR 2003, c. 1, §34 (COR). 2003, c. 499, §§5-7 (AMD). 2003, c. 688, §E1 (AMD). 2003, c. 700, §1 (AMD). 2003, c. 700, §6 (AFF). 2007, c. 299, §§3, 4 (AMD). 2009, c. 405, §§1-5 (AMD). 2011, c. 429, §§2, 3 (AMD). 2011, c. 429, §9 (AFF). 2013, c. 275, §1 (AMD).

§1866-A. ABANDONED AND UNCLAIMED DEPOSITS; REPORTS AND PAYMENTS

(REPEALED)

SECTION HISTORY
1991, c. 528, §R4 (NEW). 1991, c. 528, §§R18,RRR (AFF). 1991, c. 591, §R4 (NEW). 1991, c. 591, §R18 (AFF). 1991, c. 819, §§10,11 (AMD). 1995, c. 395, §P11 (AFF). 1995, c. 395, §P3 (RP). 1995, c. 465, §A10 (AMD). 1995, c. 465, §C2 (AFF). 2007, c. 466, Pt. A, §54 (RP).

§1866-B. STATE PAYMENTS TO DEPOSIT INITIATORS

(REPEALED)

SECTION HISTORY
1995, c. 395, §P4 (NEW). 2001, c. 661, §4 (RP).

§1866-C. REPORTING AND PAYMENT OBLIGATIONS

(REPEALED)

SECTION HISTORY
1995, c. 395, §P5 (NEW). 1995, c. 395, §P11 (AFF). 2001, c. 661, §5 (RP).

§1866-D. COMMINGLING OF BEVERAGE CONTAINERS

Notwithstanding any other provision of this chapter to the contrary, 2 or more initiators of deposit may enter into a commingling agreement through which some or all of the beverage containers for which the initiators have initiated deposits may be commingled by dealers and operators of redemption centers as provided in this section. [2003, c. 499, §8 (NEW).]

An initiator of deposit that enters into a commingling agreement pursuant to this section shall permit any other initiator of deposit to become a party to that agreement on the same terms and conditions as the original agreement. [2003, c. 499, §8 (NEW).]

1. **Commingling requirement.** If initiators of deposit enter into a commingling agreement pursuant to this section, commingling of beverage containers must be by all containers of like product group, material and size. An initiator of deposit required pursuant to section 1866, subsection 5 to pick up beverage containers subject to a commingling agreement also shall pick up all other beverage containers subject to the same agreement. The initiator of deposit may not require beverage containers that are subject to a commingling agreement to be sorted separately by a dealer or redemption center.

[2003, c. 499, §8 (NEW) .]

2. **Commingling of like materials.** For purposes of this section, containers are considered to be of like materials if made up of one of the following:

A. Plastic; [2003, c. 499, §8 (NEW).]

B. Aluminum; [2003, c. 499, §8 (NEW).]

C. Metal other than aluminum; and [2003, c. 499, §8 (NEW).]

D. Glass. [2003, c. 499, §8 (NEW).]

[2003, c. 499, §8 (NEW) .]

3. **Commingling of like products.** For purposes of this section, like products are those that are made up of one of the following:

A. Beer, ale or other beverage produced by fermenting malt, wine and wine coolers; [2003, c. 499, §8 (NEW).]

B. Spirits; [2003, c. 499, §8 (NEW).]

C. Soda; [2003, c. 499, §8 (NEW).]

D. Noncarbonated water; and [2003, c. 499, §8 (NEW).]

E. All other beverages. [2003, c. 499, §8 (NEW).]

[2003, c. 499, §8 (NEW) .]

4. **Registration of commingling agreements.** Not later than 48 hours following the execution or amendment of a commingling agreement, including an amendment that adds an additional party to an existing agreement, the parties shall file a copy of the commingling agreement or amendment with the department.

[2003, c. 499, §8 (NEW) .]

SECTION HISTORY
2003, c. 499, §8 (NEW).

§1866-E. UNCLAIMED DEPOSITS

The provisions of this section apply only to those beverage containers that are not subject to a commingling agreement pursuant to section 1866-D. [2003, c. 499, §8 (NEW).]

1. **Deposit transaction fund.** An initiator of deposit shall maintain a separate account to be known as the initiator's deposit transaction fund. The initiator shall keep that fund separate from all other revenues and accounts. The initiator shall place in that fund the refund value for all nonrefillable beverage containers it sells subject to the provisions of this chapter. Except as specified in subsections 3 and 4, amounts in the initiator's

deposit transaction fund may only be expended to pay refund values for returned nonrefillable beverage containers. Amounts in the fund may not be used to pay the handling fees required by this chapter. The fund must be maintained by the initiator on behalf of consumers who have purchased products in refundable nonrefillable beverage containers and on behalf of the State; except as specified in subsections 3 and 4, amounts in the fund may not be regarded as income of the initiator.

[2003, c. 499, §8 (NEW) .]

2. **Reports.** An initiator of deposit shall report to the State Tax Assessor by the 20th day of each month concerning transactions affecting its deposit transaction fund in the preceding month. The report must be in a form prescribed by the assessor and must include: the number of nonrefillable beverage containers sold and the number of nonrefillable beverage containers returned in the applicable month; the amount of deposits received in and payments made from the fund in the applicable month and the most recent 3-month period; any income earned on amounts in the fund during the applicable month; the balance in the fund at the close of the applicable month; and such other information as the assessor may require. The report required by this subsection must be treated by the assessor as a return, as the term is defined by Title 36, section 111, subsection 4.

[2003, c. 700, §2 (AMD); 2003, c. 700, §6 (AFF) .]

3. **Determination of abandoned deposit amounts.** The initiator's abandoned deposit amount, at the end of each month, is the amount equal to the amount of deposits that are or should be in the fund, less the sum of:

A. Income earned on amounts in the fund during that month; and [2003, c. 499, §8 (NEW).]

B. The total amount of refund values received by the initiator for nonrefillable beverage containers during that month and the 2 preceding months. [2003, c. 499, §8 (NEW).]

Income on the fund may be transferred from the fund for use as funds of the initiator.

[2003, c. 499, §8 (NEW) .]

4. **Transfer of abandoned deposit amounts.** By the 20th day of each month, an initiator shall turn over to the State Tax Assessor the initiator's abandoned deposit amounts determined pursuant to subsection 3. Those amounts may be paid from the deposit transaction fund. Amounts collected by the assessor pursuant to this subsection must be treated by the assessor as a tax, as that term is defined by Title 36, section 111, subsection 5, and must be deposited in the General Fund.

[2003, c. 700, §2 (AMD); 2003, c. 700, §6 (AFF) .]

5. **Reimbursement of initiators of deposit.** If in any month the authorized payments from the deposit transaction fund by an initiator pursuant to this section exceed the funds that are or should be in the initiator's deposit transaction fund, the State Tax Assessor shall reimburse the initiator, from amounts received pursuant to subsection 4, for those refunds paid by the initiator for nonrefillable beverage containers for which the funds that are or should be in the initiator's deposit transaction fund are insufficient; except that reimbursements paid by the assessor to an initiator may not exceed amounts paid by the initiator pursuant to subsection 4 in the preceding 24 months less amounts paid to the initiator pursuant to this subsection during that same 24-month period.

[2003, c. 700, §2 (AMD); 2003, c. 700, §6 (AFF) .]

5-A. **Administration by State Tax Assessor.** The uniform tax administration provisions of Title 36, chapter 7 apply to the State Tax Assessor's administration of the reports and payments required by this section.

[2003, c. 700, §3 (NEW); 2003, c. 700, §6 (AFF) .]

6. **Small manufacturers, bottlers and brewers exempt.** Except as otherwise provided in this subsection, a manufacturer who produces no more than 50,000 gallons of its product in a calendar year is exempt from the requirements of this section for that year. A brewer who produces no more than 50,000 gallons of its product or a bottler of water who sells no more than 250,000 containers each containing no more than one gallon of its product in a calendar year is exempt from the requirements of this section for that year.

[2013, c. 259, §1 (AMD) .]

7. **Phase in.** Notwithstanding provisions of this section and section 1866 to the contrary, if a commingling agreement for a product group was filed with the department by March 1, 2004, an initiator of deposit, whether or not a party to that agreement, is not required to turn over to the State Tax Assessor the initiator of deposit's abandoned deposit amounts for that product group as required by subsection 4 until July 1, 2004. On July 1, 2004, an initiator of deposit shall turn over to the State Tax Assessor the abandoned deposit amounts that have accrued since March 1, 2004 for all beverage containers that are not covered by a qualified commingling agreement, as described in section 1866, as of July 1, 2004.

[2003, c. 700, §4 (NEW); 2003, c. 700, §6 (AFF) .]

8. **Removal of beverage.** The department may remove from sale a beverage that is sold or distributed in the State by an initiator of deposit who is not in compliance with the reporting and payment requirements established in this section if the department is notified by the State Tax Assessor of that noncompliance. The department shall allow the sale of the beverage to resume upon notification by the State Tax Assessor that all delinquent reports have been submitted and all payments are current.

[2009, c. 592, §1 (NEW) .]

SECTION HISTORY
2003, c. 499, §8 (NEW). 2003, c. 700, §§2-4 (AMD). 2003, c. 700, §6 (AFF). 2009, c. 592, §1 (AMD). 2013, c. 259, §1 (AMD).

§1867. REDEMPTION CENTERS

1. **Establishment.** Local redemption centers may be established and operated by any person or municipality, agency or regional association as defined in Title 38, section 1310-C, subject to the approval of the commissioner, to serve local dealers and consumers, at which consumers may return empty beverage containers as provided under section 1866.

[1989, c. 585, Pt. D, §§7, 11 (AMD); 1989, c. 869, Pt. C, §12 (AFF) .]

2. **Application for approval.** Application for approval of a local redemption center shall be filed with the department. The application shall state the name and address of the person responsible for the establishment and operation of the center, the kinds, sizes and brand names of beverage containers which will be accepted and the names and addresses of dealers to be served and their distances from the local redemption center.

[1975, c. 739, §16 (NEW) .]

3. **Approval.** The commissioner may approve the licensing of a local redemption center if the redemption center complies with the requirements established under section 1871-A. The order approving a local redemption center license must state the dealers to be served and the kinds, sizes and brand names of empty beverage containers that the center accepts.

[2009, c. 405, §6 (AMD) .]

4. **Redemption center acceptance refund account.** A local redemption center may not refuse to accept from any consumer or other person not a dealer any empty, unbroken and reasonably clean beverage container of the kind, size and brand sold by a dealer served by the center as long as the label for the container is registered under section 1865, subsection 3 or refuse to pay in cash the refund value of the returned beverage container as established by section 1863-A. A redemption center or reverse vending machine is not obligated to count containers or to pay a cash refund at the time the beverage container is returned as long as the amount of the refund value due is placed into an account to be held for the benefit of the customer and funded in a manner that allows the customer to obtain deposits due within 2 business days of the time of the return.

[2007, c. 299, §5 (AMD) .]

5. **Posted lists.** A list of the dealers served and the kinds, sizes and brand names of empty beverage containers accepted shall be prominently displayed at each local redemption center.

[1975, c. 739, §16 (NEW) .]

6. **Withdrawal of approval.** The District Court may, in a manner consistent with the Maine Administrative Procedure Act, withdraw approval of a local redemption center if there has not been compliance with the approval order or if the local redemption center no longer provides a convenient service to the public.

[1977, c. 694, §585 (RPR); 1999, c. 547, §78 (AMD); 1999, c. 547, §80 (AFF) .]

SECTION HISTORY
1975, c. 739, §16 (NEW). 1977, c. 694, §585 (AMD). 1989, c. 585, §§D7,D11 (AMD). 1989, c. 869, Pt. C, §12 (AFF). 1991, c. 819, §12 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2001, c. 661, §§6,7 (AMD). 2007, c. 299, §5 (AMD). 2009, c. 405, §6 (AMD).

§1868. PROHIBITION ON CERTAIN TYPES OF CONTAINERS AND HOLDERS

A beverage may not be sold or offered for sale to consumers in this State: [1993, c. 591, §2 (AMD); 1993, c. 591, §5 (AFF).]

1. **Flip tops.** In a metal container designed or constructed so that part of the container is detachable for the purpose of opening the container without the aid of a separate can opener, except that nothing in this subsection prohibits the sale of a container, the only detachable part of which is a piece of adhesive-backed tape; and

[1993, c. 591, §2 (AMD); 1993, c. 591, §5 (AFF) .]

2. **Connectors.**

[1989, c. 585, Pt. D, §§8, 11 (RP); 1989, c. 869, Pt. C, §12 (AFF) .]

3. **Plastic cans.** In a container composed of one or more plastics if the basic structure of the container, exclusive of the closure device, also includes aluminum or steel.

[1993, c. 591, §2 (AMD); 1993, c. 591, §5 (AFF) .]

4. **Aseptic and composite material beverage containers.**

[1993, c. 591, §5 (AFF); 1993, c. 591, §2 (RP) .]

SECTION HISTORY
1975, c. 739, §16 (NEW). 1979, c. 703, (AMD). 1987, c. 373, §§4,5 (AMD). 1989, c. 585, §§D8,D11 (AMD). 1989, c. 869, §§A1,C6,12 (AMD). 1991, c. 304, §3 (AMD). 1993, c. 591, §2 (AMD). 1993, c. 591, §5 (AFF).

§1869. PENALTIES

1. **Civil violation.** A violation of this chapter by any person shall be a civil violation for which a forfeiture of not more than $100 may be adjudged.

[1975, c. 739, §16 (NEW) .]

2. **Separate violations.** Each day that such violation continues or exists shall constitute a separate offense.

[1975, c. 739, §16 (NEW) .]

3. **False reports.**

[1995, c. 395, Pt. P, §11 (AFF); 1995, c. 395, Pt. P, §6 (RP) .]

4. **Container pickup.** Notwithstanding subsection 1, a person who knowingly violates a provision of section 1866, subsection 5 commits a civil violation for which a forfeiture of $1,000 may be adjudged.

[1993, c. 703, §2 (NEW) .]

SECTION HISTORY
1975, c. 739, §16 (NEW). 1989, c. 470, §§2,3 (AMD). 1991, c. 528, §R5 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §R5 (AMD). 1993, c. 703, §2 (AMD). 1995, c. 395, §P6 (AMD). 1995, c. 395, §P11 (AFF).

§1870. EXCEPTION FOR BEVERAGE CONTAINERS USED ON INTERNATIONAL FLIGHTS

This chapter shall not apply to any beverage container sold to an airline and containing a beverage intended for consumption on an aircraft flight in interstate or foreign commerce. [1983, c. 173, (AMD).]

SECTION HISTORY
1977, c. 381, §2 (NEW). 1977, c. 564, §120 (NEW). 1977, c. 696, §243 (RAL). 1983, c. 173, (AMD).

§1871. RULES AND REGULATIONS

(REPEALED)

SECTION HISTORY
1977, c. 381, §2 (NEW). 1977, c. 696, §383 (AMD). 1977, c. 696, §243 (RAL). 1991, c. 528, §R6 (AMD). 1991, c. 528, §RRR (AFF). 1991, c. 591, §R6 (AMD). 1995, c. 395, §P7 (AMD). 1995, c. 395, §P11 (AFF). 2001, c. 661, §8 (RP).

§1871-A. LICENSING REQUIREMENTS

A license issued annually by the department is required before any person may initiate deposits under section 1863-A, operate a redemption center under section 1867 or act as a contracted agent for the collection of beverage containers under section 1866, subsection 5, paragraph B. [2001, c. 661, §9 (NEW).]

1. **Procedures; licensing fees.** The department shall adopt rules establishing the requirements and procedures for issuance of licenses and annual renewals under this section, including a fee structure. Initial rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. Rules adopted effective after calendar year 2003 are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A and are subject to review by the joint standing committee of the Legislature having jurisdiction over environmental and natural resources matters.

[2011, c. 429, §4 (AMD) .]

2. **Criteria for licensing rules.** In developing rules under subsection 1 for licensing redemption centers, the department shall consider at least the following:

A. The health and safety of the public, including sanitation protection when food is also sold on the premises; [2009, c. 405, §7 (AMD).]

B. The convenience for the public, including standards governing the distribution of centers by population or by distance, or both; [2009, c. 405, §7 (AMD).]

C. The proximity of the proposed redemption center to existing redemption centers and the potential impact that the location of the proposed redemption center may have on an existing redemption center; [2009, c. 405, §7 (NEW).]

D. The proposed owner's record of compliance with this chapter and rules adopted by the department pursuant to this chapter; and [2009, c. 405, §7 (NEW).]

E. The hours of operation of the proposed redemption center and existing redemption centers in the proximity of the proposed redemption center. [2009, c. 405, §7 (NEW).]

[2009, c. 405, §7 (AMD) .]

3. **Location of redemption centers; population requirements.** The department may grant a license to a redemption center if the following requirements are met:

A. The department may license up to 5 redemption centers in a municipality with a population over 30,000; [2009, c. 405, §7 (NEW).]

B. The department may license up to 3 redemption centers in a municipality with a population over 20,000 but no more than 30,000; and [2009, c. 405, §7 (NEW).]

C. The department may license up to 2 redemption centers in a municipality with a population over 5,000 but no more than 20,000. [2009, c. 405, §7 (NEW).]

For a municipality with a population of no more than 5,000, the department may license redemption centers in accordance with rules adopted by the department. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2009, c. 405, §7 (NEW) .]

4. **Exceptions.** Notwithstanding subsection 3:

A. An owner of a redemption center who is renewing the license of a redemption center licensed by the department as of April 1, 2009 need not comply with subsection 3; [2009, c. 405, §7 (NEW).]

B. An entity that is a food establishment or distributor licensed by or registered with the department need not comply with subsection 3; [2009, c. 405, §7 (NEW).]

C. A reverse vending machine is not considered a redemption center for purposes of subsection 3 when it is located in a licensed redemption center; and [2009, c. 405, §7 (NEW).]

D. The department may grant a license that is inconsistent with the requirements set out in subsection 3 only if the applicant has demonstrated a compelling public need for an additional redemption center in the municipality. [2009, c. 405, §7 (NEW).]

[2009, c. 405, §7 (NEW) .]

SECTION HISTORY
RR 2001, c. 2, §A41 (COR). 2001, c. 661, §9 (NEW). 2009, c. 405, §7 (AMD). 2011, c. 429, §4 (AMD).

§1871-B. BEVERAGE CONTAINER ENFORCEMENT FUND

1. **Creation.** The Beverage Container Enforcement Fund, referred to in this section as the "fund," is created under the jurisdiction and control of the department.

[2001, c. 661, §9 (NEW) .]

2. **Sources of money.** The fund consists of the following:

A. Fees for issuance of licenses and license renewals under section 1871-A; [2001, c. 661, §9 (NEW).]

B. Fees for registration of beverage container labels and registration renewals under section 1865, subsection 3; and [2001, c. 661, §9 (NEW).]

C. All other money appropriated or allocated for inclusion in the fund. [2001, c. 661, §9 (NEW).]

[2001, c. 661, §9 (NEW) .]

3. **Application of fund.** The department may combine administration and inspection responsibilities of other programs it administers with administration and enforcement responsibilities under this chapter for efficiency purposes; however, money in the fund may be used to fund only the portion of staff time devoted to administration and enforcement activities under this chapter.

[2001, c. 661, §9 (NEW) .]

4. **Revolving fund.** The fund is a nonlapsing, revolving fund. All money in the fund must be continuously applied by the department to carry out the administrative and enforcement responsibilities of the department under this chapter.

[2001, c. 661, §9 (NEW) .]

SECTION HISTORY
2001, c. 661, §9 (NEW).

§1871-C. DEPARTMENT ADMINISTRATION

The department shall administer this chapter and has the authority, following public hearing, to adopt necessary rules to carry it into effect. The department may adopt rules governing local redemption centers that receive beverage containers from dealers supplied by distributors other than the distributors servicing the area

in which the local redemption center is located in order to prevent the distributors servicing the area within which the redemption center is located from being unfairly penalized. In addition to other actions required by this chapter, department responsibilities include the following. [2001, c. 661, §9 (NEW).]

1. **Registry of labels.** The department shall establish and maintain a registry of beverage container labels. The registry must contain the information for each beverage type and beverage container filed under section 1865, subsection 3 arranged and displayed in an organized and comprehensible manner. The department shall update the registry regularly and make information from the registry available upon request.

[2001, c. 661, §9 (NEW) .]

2. **Provision of information.** The department shall provide information about the operation of this chapter to any affected person whose premises it inspects or visits as part of its licensing and inspection responsibilities.

[2001, c. 661, §9 (NEW) .]

SECTION HISTORY
2001, c. 661, §9 (NEW).

§1871-D. DENIAL OF REDEMPTION CENTER LICENSE

1. **Denial of application.** The department shall notify an applicant denied a license for a redemption center of the reasons for the denial. Written notification must be sent to the mailing address given by the applicant in the application for a redemption center license.

[2009, c. 405, §8 (NEW) .]

2. **Aggrieved applicants.** An applicant aggrieved by a decision made by the department may appeal the decision by filing an appeal with the Superior Court and serving a copy of the appeal upon the department in accordance with the Maine Rules of Civil Procedure, Rule 80C. The appeal must be filed and served within 30 days of the mailing of the department's decision.

[2009, c. 405, §8 (NEW) .]

SECTION HISTORY
2009, c. 405, §8 (NEW).

§1872. UNLAWFUL POSSESSION OF BEVERAGE CONTAINERS

A person is guilty of a violation of this section if that person possesses more than 48 beverage containers that are not labeled under section 1865. This section shall not apply to licensed waste facilities as defined in Title 38, section 1303-C. [1989, c. 585, Pt. D, §§9, 11 (NEW).]

1. **Warning.**

[2001, c. 661, §10 (RP) .]

2. **Penalty.** A violation of this section is a civil violation for which a forfeiture of $100 per container in excess of 48 beverage containers may be adjudged.

[2011, c. 429, §5 (AMD) .]

3. **Enforcement.** The Maine State Police shall enforce this section and prosecute any persons found in violation.

[1989, c. 585, Pt. D, §§9, 11 (NEW) .]

3-A. **Private right of action; containers not originally sold in the State.** An initiator of deposit may maintain a civil action in Superior Court against a person, other than a local redemption center licensed in accordance with section 1871-A, in possession of more than 48 beverage containers that the person knows or has reason to know were not originally sold in this State as filled beverage containers. If the initiator of deposit prevails in any action, the initiator of deposit is entitled to an award of reasonable attorney's fees and court costs, including expert witness fees.

[2011, c. 429, §6 (NEW) .]

4. **Exempt facilities.** The department may, by rule, adopt procedures for designating certain transportation activities and storage or production facilities or portions of facilities as exempt from this section. Any exemption granted under this subsection must be based on a showing by the person owning or operating the facility or undertaking the activity that:

A. The beverage containers stored or transported are intended solely for retail sale outside of the State; [1989, c. 869, Pt. C, §7 (NEW).]

B. The beverage containers are being transported to and stored in a facility licensed under Title 28-A, section 1371, subsection 1 prior to labeling and subsequent retail sale within the State; or [1989, c. 869, Pt. C, §7 (NEW).]

C. The person is licensed under Title 28-A, section 1401 to import malt liquor and wine into the State, the beverage containers contain malt liquor or wine and these containers are being transported or stored prior to labeling and subsequent retail sale within the State. [1989, c. 869, Pt. C, §7 (NEW).]

The department may require reporting of the numbers of beverage containers imported into and exported from the State under the terms of this subsection.

[1989, c. 869, Pt. C, §7 (NEW) .]

SECTION HISTORY
1989, c. 585, §§D9,D11 (NEW). 1989, c. 869, §C7 (AMD). 2001, c. 661, §10 (AMD). 2011, c. 429, §§5, 6 (AMD).

§1873. GLASS-BREAKING GAMES

A person, firm, corporation, association or organization may not hold, conduct or operate games of skill, as defined in Title 17, section 1831, subsection 6, that involve the breaking of glass. A violation of this section is a Class E crime. [2009, c. 487, Pt. B, §13 (AMD).]

SECTION HISTORY
1991, c. 251, §2 (NEW). 2009, c. 487, Pt. B, §13 (AMD).

Chapter 29: NURSERYMEN AND ARBORISTS

Subchapter 1: NURSERYMEN GENERALLY

§1901. LICENSE REQUIRED; FEE; VIOLATIONS

(REPEALED)

SECTION HISTORY
1973, c. 325, (AMD). 1977, c. 694, §586 (AMD). 1991, c. 785, §5 (AFF). 1991, c. 785, §4 (RPR). 1993, c. 256, §§1,2 (AMD). 1997, c. 454, §12 (AMD). 1999, c. 84, §5 (RP). 1999, c. 179, §§1-3 (AMD). 1999, c. 790, §§A36-38 (AMD).

Subchapter 2: TREE SPECIALISTS

Article 1: GENERAL PROVISIONS

§1951. DEFINITIONS

(REPEALED)

SECTION HISTORY
1965, c. 226, §70 (AMD). 1971, c. 347, §1 (AMD). 1973, c. 460, §18 (AMD). 1977, c. 360, §24 (AMD). 1979, c. 166, §1 (AMD). 1987, c. 735, §58 (AMD). 1997, c. 210, §§7,8 (AMD). 1999, c. 84, §5 (RP).

§1952. EXEMPTIONS

(REPEALED)

SECTION HISTORY
1965, c. 226, §70 (AMD). 1965, c. 425, §18C (AMD). 1971, c. 347, §2 (AMD). 1987, c. 735, §59 (AMD). 1995, c. 353, §§12,13 (AMD). 1999, c. 84, §5 (RP).

§1953. APPEALS

(REPEALED)

SECTION HISTORY
1965, c. 226, §70 (AMD). 1977, c. 694, §587 (RP).

§1954. ENFORCEMENT

(REPEALED)

SECTION HISTORY
1965, c. 226, §70 (AMD). 1983, c. 413, §101 (RP).

§1955. PENALTIES; INJUNCTION

(REPEALED)

SECTION HISTORY
1965, c. 226, §70 (AMD). 1983, c. 413, §102 (RPR). 1999, c. 84, §5 (RP).

Article 2: ARBORIST EXAMINING BOARD

§2001. MEMBERSHIP; MEETINGS; COMPENSATION AND EXPENSES

(REPEALED)

SECTION HISTORY
1965, c. 226, §§71,72 (AMD). 1973, c. 460, §18 (AMD). 1975, c. 575, §27 (AMD). 1977, c. 682, §6 (AMD). 1979, c. 545, §10 (AMD). 1981, c. 567, §1 (AMD). 1983, c. 413, §103 (RPR). 1983, c. 553, §46 (AMD). 1983, c. 812, §§214,215 (AMD). 1985, c. 779, §77 (AMD). 1987, c. 735, §60 (AMD). 1989, c. 502, §B38 (AMD). 1989, c. 503, §B132 (AMD). 1993, c. 600, §A107 (AMD). 1995, c. 397, §38 (AMD). 1999, c. 84, §5 (RP).

§2002. POWERS

(REPEALED)

SECTION HISTORY
1983, c. 413, §104 (RPR). 1995, c. 353, §14 (AMD). 1995, c. 397, §39 (AMD). 1999, c. 84, §5 (RP).

§2003. LISTS OF ARBORISTS; SUSPENSION OR REVOCATION OF LICENSES

(REPEALED)

SECTION HISTORY
1965, c. 226, §72A (AMD). 1977, c. 360, §25 (AMD). 1977, c. 682, §§7,8 (AMD). 1977, c. 694, §588 (AMD). 1983, c. 413, §105 (AMD). 1987, c. 735, §61 (RPR). 1995, c. 502, §H48 (AMD). 1999, c. 84, §5 (RP).

§2004. DISPOSAL OF FEES

(REPEALED)

SECTION HISTORY
1977, c. 360, §26 (AMD). 1987, c. 735, §62 (AMD). 1995, c. 397, §40 (RP).

Article 3: LICENSES

§2051. LICENSE REQUIRED

(REPEALED)

SECTION HISTORY
1965, c. 226, §73 (AMD). 1979, c. 166, §2 (AMD). 1983, c. 413, §106 (AMD). 1999, c. 84, §5 (RP).

§2051-A. EXEMPTIONS TO LICENSING REQUIREMENTS FOR TREE REMOVAL IN MUNICIPALITIES OF UNDER 2,500 PERSON'S

(REPEALED)

SECTION HISTORY
1979, c. 166, §3 (NEW). 1999, c. 84, §5 (RP).

§2052. QUALIFICATIONS TYPES OF LICENSES

(REPEALED)

SECTION HISTORY
1965, c. 226, §74 (AMD). 1973, c. 460, §18 (AMD). 1983, c. 413, §107 (AMD). 1999, c. 84, §5 (RP).

§2053. APPLICATIONS

(REPEALED)

SECTION HISTORY
1965, c. 226, §75 (AMD). 1973, c. 460, §18 (AMD). 1981, c. 567, §2 (AMD). 1983, c. 413, §108 (AMD). 1995, c. 353, §15 (AMD). 1999, c. 84, §5 (RP).

§2054. NONRESIDENTS

(REPEALED)

SECTION HISTORY
1965, c. 226, §75 (AMD). 1973, c. 460, §18 (AMD). 1983, c. 413, §109 (AMD). 1995, c. 353, §16 (AMD). 1999, c. 84, §5 (RP).

§2055. EXAMINATIONS

(REPEALED)

SECTION HISTORY
1965, c. 226, §75 (AMD). 1981, c. 567, §§3,4 (AMD). 1983, c. 413, §110 (AMD). 1987, c. 735, §§63,64 (AMD). 1999, c. 84, §5 (RP).

§2056. FORMS

(REPEALED)

SECTION HISTORY
1965, c. 226, §75 (AMD). 1973, c. 460, §18 (AMD). 1983, c. 413, §111 (AMD). 1995, c. 353, §17 (AMD). 1997, c. 210, §9 (AMD). 1999, c. 84, §5 (RP).

§2057. TERM

(REPEALED)

SECTION HISTORY
1965, c. 226, §75 (AMD). 1973, c. 460, §18 (AMD). 1977, c. 360, §27 (AMD). 1983, c. 204, §4 (AMD). 1983, c. 413, §112 (AMD). 1987, c. 735, §65 (AMD). 1995, c. 353, §18 (AMD). 1999, c. 84, §5 (RP).

§2058. RENEWALS

(REPEALED)

SECTION HISTORY

1973, c. 460, §18 (AMD). 1977, c. 360, §28 (RPR). 1981, c. 567, §5 (AMD). 1983, c. 204, §5 (AMD). 1995, c. 353, §19 (AMD). 1999, c. 84, §5 (RP).

§2059. FEES

(REPEALED)

SECTION HISTORY
1977, c. 360, §29 (AMD). 1981, c. 567, §6 (RPR). 1983, c. 204, §6 (AMD). 1983, c. 413, §113 (AMD). 1995, c. 353, §20 (AMD). 1999, c. 84, §5 (RP).

§2060. RECIPROCITY

(REPEALED)

SECTION HISTORY
1965, c. 226, §76 (AMD). 1995, c. 353, §21 (AMD). 1999, c. 84, §5 (RP).

§2061. DENIAL OF LICENSE; SUSPENSION OR REVOCATION

(REPEALED)

SECTION HISTORY
1965, c. 226, §77 (AMD). 1977, c. 360, §30 (AMD). 1977, c. 694, §589 (RPR). 1983, c. 413, §§114,115 (AMD). 1999, c. 84, §5 (RP).

Chapter 31: NURSES AND NURSING

Subchapter 1: GENERAL PROVISIONS

§2101. PURPOSE

The State Board of Nursing is the state regulatory agency charged with protection of the public health and welfare in the area of nursing service. In order to safeguard the life and health of the people in this State, an individual who for compensation practices or offers to practice professional nursing or practical nursing in this State shall submit evidence that the individual is qualified so to practice and that individual must be licensed. It is unlawful for an individual not licensed under this chapter to practice or to offer to practice professional or practical nursing in this State; to use a sign, card or device to indicate that the individual is a professional registered nurse or a licensed practical nurse; or to hold oneself out to the public as a professional registered nurse or a licensed practical nurse. [1993, c. 600, Pt. A, §108 (AMD).]

SECTION HISTORY
1967, c. 263, §1 (AMD). 1985, c. 724, §1 (AMD). 1993, c. 600, §A108 (AMD).

§2102. DEFINITIONS

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

As used in this chapter, unless the context indicates otherwise, the following words have the following meanings. [1993, c. 600, Pt. A, §109 (AMD).]

1. **Board.** "Board" means the State Board of Nursing.

2. **Professional nursing.** The practice of "professional nursing" means the performance by a registered professional nurse for compensation of professional services defined as follows:

A. (TEXT EFFECTIVE UNTIL 1/1/15) Diagnosis and treatment of human responses to actual or potential physical and emotional health problems through such services as case finding, health teaching, health counseling and provision of care supportive to or restorative of life and well-being and execution of the medical regimen as prescribed by a licensed physician, podiatrist or dentist or otherwise legally authorized individual acting under the delegated authority of a physician, podiatrist or dentist:

(1) "Diagnosis" in the context of nursing practice means that identification of and discrimination between physical and psychosocial signs and symptoms essential to effective execution and management of the nursing regimen. This diagnostic privilege is distinct from medical diagnosis;

(2) "Human responses" means those signs, symptoms and processes that denote the individual's health needs or reaction to an actual or potential health problem; and

(3) "Treatment" means selection and performance of those therapeutic measures essential to the effective management and execution of the nursing regimen; [1993, c. 600, Pt. A, §110 (AMD).]

A. (TEXT EFFECTIVE 1/1/15) Diagnosis and treatment of human responses to actual or potential physical and emotional health problems through such services as case finding, health teaching, health counseling and provision of care supportive to or restorative of life and well-being and execution of the medical regimen as prescribed by a legally authorized licensed professional acting within the scope of the licensed professional's authority to prescribe medications, substances or devices or otherwise legally authorized individual acting under the delegated authority of alegally authorized licensed professional acting within the scope of the licensed professional's authority to prescribe medications, substances or devices:

(1) "Diagnosis" in the context of nursing practice means that identification of and discrimination between physical and psychosocial signs and symptoms essential to effective execution and management of the nursing regimen. This diagnostic privilege is distinct from medical diagnosis;

(2) "Human responses" means those signs, symptoms and processes that denote the individual's health needs or reaction to an actual or potential health problem; and

(3) "Treatment" means selection and performance of those therapeutic measures essential to the effective management and execution of the nursing regimen; [2013, c. 540, §1 (AMD); 2013, c. 540, §2 (AFF).]

B. [1995, c. 379, §11 (AFF); 1995, c. 379, §3 (RP).]

C. Delegation of selected nursing services to licensed practical nurses when the services use standardized protocols and procedures leading to predictable outcomes in the observation and care of the ill, injured and infirm; in the maintenance of health; in action to safeguard life and health; and in the administration of medications and treatments prescribed by an individual authorized by state law to prescribe. The board shall issue such rules concerning delegation as it considers necessary to ensure quality health care to the patient; [1993, c. 600, Pt. A, §110 (AMD).]

D. Delegation of selected nursing services to assistants to nurses who have completed or are currently enrolled in a course sponsored by a state-approved facility or a facility licensed by the Department of Health and Human Services. This course must include a curriculum approved by the board. The board shall issue such rules concerning delegation as it considers necessary to ensure quality of health care to the patient; [1995, c. 625, Pt. B, §11 (AMD); 2003, c. 689, Pt. B, §6 (REV).]

E. Supervision and teaching of nursing personnel; [1985, c. 724, §2 (RPR).]

F. Administration of medications and treatment as prescribed by a legally authorized individual. Nothing in this section may be construed as limiting the administration of medication by licensed or unlicensed personnel as provided in other laws; [1995, c. 670, Pt. C, §4 (AMD); 1995, c. 670, Pt. D, §5 (AFF).]

G. Teaching activities of daily living to care providers designated by the patient and family; and [1995, c. 670, Pt. C, §5 (AMD); 1995, c. 670, Pt. D, §5 (AFF).]

H. Coordination and oversight of patient care services provided by unlicensed health care assistive personnel. Nothing in this paragraph prohibits a nurse in the exercise of professional judgment from refusing to provide such coordination and oversight in any care setting. The board shall adopt, pursuant to Title 5, chapter 375, subchapter II-A, major substantive rules for the application of this paragraph to nursing practice. [1995, c. 670, Pt. C, §6 (NEW); 1995, c. 670, Pt. D, §5 (AFF).]

[1995, c. 625, Pt. B, §11 (AMD); 1995, c. 670, Pt. C, §§4-6 (AMD); 1995, c. 670, Pt. D, §5 (AFF); 2003, c. 689, Pt. B, §6 (REV); 2013, c. 540, §1 (AMD); 2013, c. 540, §2 (AFF) .]

2-A. **Advanced practice registered nursing.** "Advanced practice registered nursing" means the delivery of expanded professional health care by an advanced practice registered nurse that is:

A. [2003, c. 204, Pt. H, §1 (RP).]

B. Within the advanced practice registered nurse's scope of practice as specified by the board by rulemaking, taking into consideration any national standards that exist; and [1995, c. 379, §4 (NEW); 1995, c. 379, §11 (AFF).]

C. In accordance with the standards of practice for advanced practice registered nurses as specified by the board by rulemaking, taking into consideration any national standards that may exist. Advanced practice registered nursing includes consultation with or referral to medical and other health care providers when required by client health care needs. [1995, c. 379, §4 (NEW); 1995, c. 379, §11 (AFF).]

A certified nurse practitioner or a certified nurse midwife who qualifies as an advanced practice registered nurse may prescribe and dispense drugs or devices, or both, in accordance with rules adopted by the board.

A certified nurse practitioner who qualifies as an advanced practice registered nurse must practice, for at least 24 months, under the supervision of a licensed physician or a supervising nurse practitioner or must be employed by a clinic or hospital that has a medical director who is a licensed physician. The certified nurse practitioner shall submit written evidence to the board upon completion of the required clinical experience.

The board shall adopt rules necessary to effectuate the purposes of this chapter relating to advanced practice registered nursing.

[2007, c. 316, §1 (AMD) .]

3. **Practical nursing.** The practice of "practical nursing" means performing tasks and responsibilities, by a licensed practical nurse, for compensation within a structured health care setting, reinforcing the patient and family teaching program through health teaching, health counseling and provision of supportive and restorative care, under the direction of a registered nurse or licensed or otherwise legally authorized physician, podiatrist or dentist.

[1991, c. 731, §2 (AMD) .]

4. **License.** A "license" is an authorization to practice nursing as a professional nurse, practical nurse or advanced practice registered nurse.

[2007, c. 498, §1 (AMD); 2007, c. 498, §3 (AFF) .]

5. **Professional nurse.** The terms "professional nurse," "registered nurse" or "registered professional nurse" mean an individual who is currently licensed under this chapter and who practices professional nursing as defined in subsection 2. "R.N." is the abbreviation for the title of "registered professional nurse."

[1993, c. 600, Pt. A, §111 (AMD) .]

5-A. **Advanced practice registered nurse.** "Advanced practice registered nurse" means an individual who is currently licensed under this chapter to practice advanced practice registered nursing as defined in subsection 2-A. "A.P.R.N." is the abbreviation for the title of "advanced practice registered nurse." An advanced practice registered nurse may use the abbreviation "A.P.R.N." or the title or abbreviation designated by the national certifying body.

"Advanced practice registered nurse" includes a certified nurse practitioner, a certified nurse midwife, a certified clinical nurse specialist and a certified nurse anesthetist who are licensed under this chapter to practice advanced practice registered nursing.

[2007, c. 498, §2 (AMD); 2007, c. 498, §3 (AFF) .]

6. **Licensed practical nurse.** The term "licensed practical nurse" means an individual who is currently licensed under this chapter and who practices practical nursing as defined in subsection 3. "L.P.N." is the abbreviation for the title of "licensed practical nurse."

[1993, c. 600, Pt. A, §111 (AMD) .]

7. **Approved nursing school.** An " approved nursing school" or " approved nursing education program" means a school of nursing or a nursing department or division of a university or college or a school for the education of practical nurses approved by the board as provided in this chapter.

[1985, c. 724, §4 (AMD) .]

8. **Certified nursing assistant.** "Certified nursing assistant" means an individual whose duties are assigned by a registered professional nurse and who:

A. Has successfully completed a training program or course with a curriculum prescribed by the board, holds a certificate of training from that program or course and is listed on the Maine Registry of Certified Nursing Assistants and Direct Care Workers; or [2011, c. 257, §19 (AMD).]

B. Was certified before September 29, 1987 and is listed on the Maine Registry of Certified Nursing Assistants and Direct Care Workers. [2011, c. 257, §20 (AMD).]

[2011, c. 257, §§19, 20 (AMD) .]

9. **Maine Registry of Certified Nursing Assistants and Direct Care Workers.** "Maine Registry of Certified Nursing Assistants and Direct Care Workers" has the same meaning as in Title 22, section 1812-G.

[2011, c. 257, §21 (AMD) .]

10. **Supervising nurse practitioner.** "Supervising nurse practitioner" means a certified nurse practitioner who qualifies as an advanced practice registered nurse who has:

A. Completed 24 months of supervised practice in accordance with subsection 2-A; [2007, c. 316, §2 (NEW).]

B. Practiced as an advanced practice registered nurse for a minimum of 5 years in the same speciality; [2007, c. 316, §2 (NEW).]

C. Worked in a clinical health care field for a minimum of 10 years; and [2007, c. 316, §2 (NEW).]

D. Been approved by the board. [2007, c. 316, §2 (NEW).]

The board shall adopt rules necessary to effectuate the purposes of this chapter relating to supervising nurse practitioners. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2007, c. 316, §2 (NEW) .]

SECTION HISTORY
1967, c. 263, §2 (AMD). 1973, c. 495, §§1,2 (AMD). 1973, c. 737, §1 (AMD). 1973, c. 788, §155 (AMD). 1977, c. 395, §§1, 2 (AMD). 1977, c. 497, §10 (AMD). 1977, c. 696, §244 (AMD). 1985, c. 724, §§2-4 (AMD). 1985, c. 748, §42 (AMD). 1985, c. 819, §§A27, 28 (AMD). 1987, c. 195, §3 (AMD). 1991, c. 421, §§2, 3 (AMD). 1991, c. 731, §§1, 2 (AMD). 1993, c. 600, §§A109-112 (AMD). 1995, c. 379, §§3-5 (AMD). 1995, c. 379, §11 (AFF). 1995, c. 625, §B11 (AMD). 1995, c. 670, §§C4-6 (AMD). 1995, c. 670, §D5 (AFF). RR 2001, c. 2, §A42 (COR). 2003, c. 204, §H1 (AMD). 2003, c. 510, §B10 (AMD). 2003, c. 689, §B6 (REV). 2007, c. 316, §§1, 2 (AMD). 2007, c. 498, §§1, 2 (AMD). 2007, c. 498, §3 (AFF). 2011, c. 257, §§19-21 (AMD). 2013, c. 540, §1 (AMD). 2013, c. 540, §2 (AFF).

§2103. EXCEPTIONS

This chapter does not prohibit:

1. **Emergency.** The rendering of nursing assistance in the case of emergency;

[1985, c. 724, §5 (AMD) .]

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, or the practice of nursing by graduates of board-approved programs who are participating in a structured orientation program specifically designed for graduates of board-approved nursing programs as defined by the board, 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 supervision and a practice setting;

[2005, c. 163, §1 (AMD) .]

3. **United States Government.**

[1985, c. 724, §7 (RP) .]

4. **Licensure in another state or jurisdiction.** The practice of:

A. Nursing by a registered nurse or a licensed practical nurse currently licensed in another state or United States territory for a period of 90 days pending licensure in the State if the nurse, upon employment, has furnished the employer with satisfactory evidence of current licensure in another state or United States territory and the nurse furnishes a letter of authorization to the prospective employer of having submitted proper application and fees to the board for licensure prior to employment; [2003, c. 204, Pt. H, §2 (AMD).]

B. A currently licensed nurse of another United States jurisdiction or foreign country who is providing educational programs or consultative services within this State for a period not to exceed a total of 21 days per year; [1993, c. 600, Pt. A, §113 (AMD).]

C. A currently licensed nurse of another state who is transporting patients into, out of or through this State. The exemption is limited to a period not to exceed 48 hours for each transport; [2003, c. 204, Pt. H, §2 (AMD).]

D. Nursing in this State by a currently licensed nurse whose employment was contracted outside this State but requires the nurse to accompany and care for the patient while in this State. This practice is limited to the particular patient to 3 months within one year and is at the discretion of the board; or [1993, c. 600, Pt. A, §113 (AMD).]

E. Nursing by a registered nurse or licensed practical nurse currently licensed in a jurisdiction outside the United States or its territories for a period not to exceed 90 days pending receipt of a United States social security number as long as all other requirements for licensure have been submitted and verified and the registered or licensed nurse has furnished upon employment satisfactory evidence of current licensure in another jurisdiction and the nurse furnishes a letter of authorization to the prospective employer of having submitted proper application and fees to the board for licensure prior to employment; [2003, c. 204, Pt. H, §2 (NEW).]

[2003, c. 204, Pt. H, §2 (AMD) .]

5. **Practice of practical nursing.**

[1967, c. 263, §4 (RP) .]

6. **Nursing services; practice of religious principles.** Nursing services performed in accordance with the practice of the religious principles or tenets of a church or denomination that relies upon prayer or spiritual means alone for healing; or

[2003, c. 204, Pt. H, §3 (AMD) .]

7. **Nursing services by successful candidates of the National Council of State Boards of Nursing, Inc.'s National Council Licensure Examination pending receipt of United States social security number.** The practice of nursing for a period not to exceed 90 days by an applicant for licensure as a registered professional nurse or practical nurse who has passed the National Council of State Boards of Nursing, Inc.'s National Council Licensure Examination and has met all requirements for licensure except obtaining a United States social security number, as required by Title 36, section 175.

[2005, c. 163, §2 (AMD) .]

SECTION HISTORY
1967, c. 263, §§3,4 (AMD). 1985, c. 724, §§5-9 (AMD). 1993, c. 600, §A113 (AMD). 1999, c. 386, §H1 (AMD). 2001, c. 260, §D1 (AMD). 2003, c. 204, §§H2-4 (AMD). 2005, c. 163, §§1,2 (AMD).

§2104. EDUCATION PROGRAMS

1. **Application for approval.** An institution desiring to conduct a nursing education program to prepare professional or practical nurses must apply to the board and submit evidence that:

A. It is prepared to carry out the prescribed professional nursing curriculum or the prescribed curriculum for practical nursing, as the case may be; and

B. It is prepared to meet other standards as established by this chapter and by the board. [1993, c. 600, Pt. A, §114 (AMD).]

[1993, c. 600, Pt. A, §114 (AMD) .]

2. **Survey.** A survey of the institution and its entire nursing education program must be made by either or both the executive director or other authorized appointee of the board, who shall submit a written report of the survey to the board. If, in the opinion of the board, the requirements for an approved nursing education program are met, the institution must be approved as a nursing education program for professional or practical nurses.

From time to time as determined necessary by the board, it is the duty of the board, through its executive director or other authorized representative of the board, to survey all nursing education programs in the State. Written reports of the surveys must be submitted to the board. If the board determines that an approved nursing education program is not maintaining the standards required by statute and by the board, notice in writing specifying the defect or defects must be immediately given to the institution conducting the program. If a program fails to correct these conditions to the satisfaction of the board within a reasonable time, the board shall take appropriate action pursuant to section 2153.

[1993, c. 600, Pt. A, §114 (AMD) .]

3. **In-service training.** Nothing in this chapter applies to in-service teaching or training programs for paramedical personnel.

4. **Approval and monitoring of nursing assistant training curriculum and faculty.** An educational institution or health care facility desiring to conduct an educational program for nursing assistants to prepare individuals for a certificate of training and subsequent listing on the Maine Registry of Certified Nursing Assistants and Direct Care Workers must apply to the Department of Health and Human Services and submit evidence:

A. That it is prepared to carry out the curriculum for nursing assistants as prescribed by the board; [1993, c. 600, Pt. A, §114 (AMD).]

B. That it is prepared to meet those standards established by the board; [1993, c. 600, Pt. A, §114 (AMD).]

C. That it is prepared to meet those standards for educational programming and faculty as established by the Department of Health and Human Services; and [2009, c. 628, §3 (AMD).]

D. With respect to an application by a health care facility, that an educational institution cannot provide a nursing assistant training program within 30 days of the application date. [1993, c. 600, Pt. A, §114 (AMD).]

The Department of Health and Human Services shall issue a notice of approval to an educational institution or health care facility that meets the requirements of this subsection.

[2011, c. 257, §22 (AMD) .]

SECTION HISTORY
1985, c. 724, §10 (AMD). 1987, c. 195, §4 (AMD). 1989, c. 700, §A145 (AMD). 1991, c. 421, §4 (AMD). 1993, c. 600, §A114 (AMD). 2009, c. 628, §3 (AMD). 2011, c. 257, §22 (AMD).

§2104-A. NURSE ORIENTATION IN INSTITUTIONS

A nurse who is employed in a hospital or nursing home and involved in direct patient care shall, at the beginning of the nurse's employment, participate in an individualized controlled learning experience adjusted for competency based upon practice standards and protocols. Each hospital or nursing home shall develop a plan with the employee for compliance with this section, which must contain a mutually agreed upon completion date. A copy of the plan must be made a part of the nurse's personnel file. The staffing plan for the hospital or nursing home must reflect current trainee competence. [1993, c. 600, Pt. A, §115 (AMD).]

SECTION HISTORY
1989, c. 579, §7 (NEW). 1993, c. 600, §A115 (AMD).

§2105. DISCIPLINARY PROCEEDINGS

(REPEALED)

SECTION HISTORY
1973, c. 303, §3 (AMD). 1977, c. 694, §590 (AMD). 1983, c. 378, §20 (RP).

§2105-A. DISCIPLINARY ACTIONS

1. **Disciplinary proceedings and sanctions.**

[1985, c. 724, §11 (RP) .]

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, absent unusual circumstances justifying the delay, not later than 60 days from receipt of this information. The licensee shall respond within 30 days. The board shall share the licensee's response with the complainant, unless the board determines that it would be detrimental to the health of the complainant to obtain the response. 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 the complaint 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 complainant may attend the conference and may be accompanied by up to 2 individuals, including legal counsel. 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. Before the board or its subcommittee decides what action to take at the conference or as a result of the conference, the board or its subcommittee shall give the complainant a reasonable opportunity to speak. Statements made at the conference may not be introduced at a subsequent formal hearing unless all parties consent.

When a complaint has been filed against a licensee and the licensee moves or has moved to another state, the board may report to the appropriate licensing board in that state the complaint that has been filed, other complaints in the licensee's record on which action was taken and disciplinary actions of the board with respect to that licensee.

When an individual applies for a license under this chapter, the board may investigate the professional record of that individual, including professional records that the individual may have as a licensee in other states. The board may deny a license or authorize a restricted license based on the record of the applicant in other states.

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, the board or its subcommittee may take any of the following actions the board or its subcommittee considers appropriate:

A. Warn, censure or reprimand; [1985, c. 724, §12 (NEW).]

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; [1993, c. 600, Pt. A, §116 (AMD).]

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; [1993, c. 600, Pt. A, §116 (AMD).]

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 4; or [2013, c. 23, §1 (AMD).]

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. [2001, c. 260, Pt. D, §2 (AMD).]

[2013, c. 23, §1 (AMD) .]

2. **Grounds for discipline.** The board may suspend or revoke a license pursuant to Title 5, section 10004. The following are grounds for an action to refuse to issue, modify, suspend, revoke or refuse to renew the license of an individual licensed under this chapter:

A. The practice of fraud or deceit in obtaining a license under this chapter or in connection with service rendered within the scope of the license issued; [1983, c. 378, §21 (NEW).]

B. Misuse of alcohol, drugs or other substances that has resulted or may result in the licensee performing services in a manner that endangers the health or safety of patients; [2013, c. 105, §5 (AMD).]

C. A professional diagnosis of a mental or physical condition that has resulted or is foreseeably likely to result in the licensee performing the licensee's duties in a manner that endangers the health or safety of the licensee's patients; [1993, c. 600, Pt. A, §116 (AMD).]

D. Aiding or abetting the practice of nursing by an individual not licensed under this chapter and who claims to be legally licensed; [1993, c. 600, Pt. A, §116 (AMD).]

E. Incompetence in the practice for which the licensee is licensed. A licensee is considered incompetent in the practice if the licensee has:

(1) Engaged in conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client or patient or the general public; or

(2) Engaged in conduct that evidences a lack of knowledge or inability to apply principles or skills to carry out the practice for which the licensee is licensed; [1993, c. 600, Pt. A, §116 (AMD).]

F. Unprofessional conduct. A licensee is considered to have engaged in unprofessional conduct if the licensee violates a standard of professional behavior that has been established in the practice for which the licensee is licensed; [1993, c. 600, Pt. A, §116 (AMD).]

G. Subject to the limitations of Title 5, chapter 341, conviction of a crime that involves dishonesty or false statement or that relates directly to the practice for which the licensee is licensed or conviction of a crime for which incarceration for one year or more may be imposed; [1993, c. 600, Pt. A, §116 (AMD).]

H. A violation of this chapter or a rule adopted by the board; or [1993, c. 600, Pt. A, §116 (AMD).]

I. Engaging in false, misleading or deceptive advertising. [1983, c. 378, §21 (NEW).]

[2013, c. 105, §5 (AMD) .]

3. **Confidentiality of information.** Reports, information or records provided to the board by a health care facility pursuant to this chapter are confidential insofar as the reports, information or records identify or permit identification of a patient, except that the board may disclose confidential information:

A. In an adjudicatory hearing or informal conference before the board or in a subsequent formal proceeding to which the information is relevant; and [1993, c. 600, Pt. A, §116 (AMD).]

B. In a consent agreement or other written settlement when the information constitutes or pertains to the basis of board action. [1993, c. 600, Pt. A, §116 (AMD).]

A copy of a report, information or record received by the board under this subsection must be provided to the licensee.

[1993, c. 600, Pt. A, §116 (AMD) .]

4. **Authority to request mental and physical examinations.** For the purposes of this section, by application for and acceptance of a license to practice, a nurse is considered to have given consent to a mental or physical examination when directed by the board. The board may direct a nurse to submit to an examination whenever the board determines the nurse may be suffering from a mental illness that may be interfering with the competent practice of nursing or from the use of intoxicants or drugs to an extent that they are preventing the nurse from practicing nursing competently and with safety to patients. A nurse examined pursuant to an order of the board may not prevent the testimony of the examining individual or prevent the acceptance into evidence of the report of an examining individual in a proceeding under subsection 1-A. Failure to comply with an order of the board to submit to a mental or physical examination results in the immediate suspension of the license of the nurse by order of the District Court until the nurse submits to the examination.

[2009, c. 47, §2 (NEW) .]

5. **Nurse health program.** The board may establish protocols for the operation of a professional review committee as defined in Title 24, section 2502, subsection 4-A. The protocols must include the committee's reporting information the board considers appropriate regarding reports received, contracts or investigations made and the disposition of each report, as long as the committee is not required to disclose any personally identifiable information. The protocols may not prohibit an impaired nurse from seeking alternative forms of treatment.

The board may contract with other agencies, individuals, firms or associations for the conduct and operation of a nurse health program operated by a professional review committee as that term is defined in Title 24, section 2502, subsection 4-A.

[2009, c. 47, §3 (NEW) .]

SECTION HISTORY
1983, c. 378, §21 (NEW). 1983, c. 769, §§1,2 (AMD). 1985, c. 724, §§11,12 (AMD). 1993, c. 600, §A116 (AMD). 1999, c. 547, §B62 (AMD). 1999, c. 547, §B80 (AFF). 2001, c. 260, §D2 (AMD). 2009, c. 47, §§2, 3 (AMD). 2013, c. 23, §1 (AMD). 2013, c. 105, §5 (AMD).

§2106. CRIMINAL VIOLATIONS; PENALTIES

It is a crime for any person, including a corporation, or association or individual, to: [1993, c. 600, Pt. A, §117 (AMD).]

1. **Fraudulent diploma or record.** Sell or fraudulently obtain or furnish a nursing diploma, license, renewal or record or provide aid in doing so;

[1993, c. 600, Pt. A, §117 (AMD) .]

2. **Fraudulent license.** Practice nursing as defined by this chapter under cover of a diploma, license or record illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation;

[1993, c. 600, Pt. A, §117 (AMD) .]

3. **Practice without license.** Practice professional nursing or practical nursing as defined by this chapter unless licensed to do so;

[1993, c. 600, Pt. A, §117 (AMD) .]

4. **Implying license.** Use in connection with the person's name a designation tending to imply that the person is a licensed registered nurse or a licensed practical nurse unless so licensed under this chapter;

[1993, c. 600, Pt. A, §117 (AMD) .]

5. **License suspended or revoked.** Practice professional nursing or practical nursing during the time the person's license issued under this chapter is suspended or revoked; or

[1991, c. 797, §15 (AMD) .]

6. **Violation of chapter.**

[2001, c. 421, Pt. B, §97 (RP); 2001, c. 421, Pt. C, §1 (AFF) .]

A person who violates this section commits a Class E crime. [1991, c. 797, §15 (RPR).]

The District Court has original and concurrent jurisdiction with the Superior Court over all prosecutions for violation of this chapter. All fines and forfeitures collected under this chapter must accrue to the county where the offense is prosecuted. It is necessary to prove in a prosecution or hearing under this section only a single act prohibited by law or a single holding out or an attempt without proving a general course of conduct in order to constitute a violation. These crimes are prosecuted by the district attorney. [1993, c. 600, Pt. A, §117 (AMD).]

SECTION HISTORY
1967, c. 263, §5 (AMD). 1973, c. 567, §20 (AMD). 1991, c. 797, §15 (AMD). 1993, c. 600, §A117 (AMD). 2001, c. 421, §B97 (AMD). 2001, c. 421, §C1 (AFF).

§2106-A. CIVIL VIOLATIONS; PENALTIES

A person who violates any provision of this chapter for which a penalty is not prescribed commits a civil violation for which a forfeiture of not more than $1,000 may be adjudged. [2001, c. 421, Pt. B, §98 (NEW); 2001, c. 421, Pt. C, §1 (AFF).]

SECTION HISTORY
2001, c. 421, §B98 (NEW). 2001, c. 421, §C1 (AFF).

§2107. INJUNCTIONS

The Superior Court has jurisdiction, upon information filed by the county attorney at the request of the board, to restrain or enjoin an individual from committing an act declared to be a misdemeanor by this chapter. If it is established that the defendant has been or is committing an act declared to be a misdemeanor by this chapter, the court shall enter a decree perpetually enjoining the defendant from further committing that act. In case of violation of an injunction issued under this section, the court may summarily try and punish the offender for contempt of court. Injunction proceedings are in addition to, and not in lieu of, all penalties and other remedies provided in this chapter. [1993, c. 600, Pt. A, §118 (AMD).]

SECTION HISTORY
1993, c. 600, §A118 (AMD).

§2108. IMMUNITY

(REPEALED)

SECTION HISTORY
1971, c. 371, (NEW). 1975, c. 452, §3 (RP).

§2108-A. IMMUNITY

An individual or health care facility acting in good faith is immune from civil liability to the licensee or applicant for licensure for the following actions: [1993, c. 600, Pt. A, §119 (AMD).]

1. **Making information available to the board.** Making a report or other information available to the board under this chapter; and

[1993, c. 600, Pt. A, §119 (AMD) .]

2. **Assisting the board.** Assisting the board in carrying out its duties.

[1993, c. 600, Pt. A, §119 (AMD) .]

SECTION HISTORY
1983, c. 769, §3 (NEW). 1993, c. 600, §A119 (AMD).

§2109. CONFIDENTIALITY OF PERSONAL INFORMATION OF APPLICANT OR LICENSEE

For applications for licensure and for renewal of licensure submitted on or after July 1, 2004, an applicant or licensee shall provide the board with a current professional address and telephone number, which is the public contact address, and a personal residence address and telephone number. An applicant's or licensee's personal residence address and telephone number, and e-mail address if provided by the applicant, are confidential information and may not be disclosed except as permitted by this section or as required by law unless the personal residence address, telephone number and e-mail address have been provided as the public contact address. Personal health information submitted as part of any application is confidential information and may not be disclosed except as permitted or required by law. [2003, c. 64, §1 (NEW).]

SECTION HISTORY
2003, c. 64, §1 (NEW).

§2110. EXPEDITED PARTNER THERAPY

An individual licensed under this chapter may not be disciplined for providing expedited partner therapy in accordance with the provisions of Title 22, chapter 251, subchapter 3, article 5. [2009, c. 533, §2 (NEW).]

SECTION HISTORY
2009, c. 533, §2 (NEW).

Subchapter 2: STATE BOARD OF NURSING

§2151. APPOINTMENT; TERM; REMOVAL

The State Board of Nursing, as established by Title 5, section 12004-A, subsection 25, consists of 9 members who are appointed by the Governor. A full-term appointment is for 4 years. Appointment of members must comply with Title 10, section 8009. Members of the board may be removed from office for cause by the Governor. [2007, c. 695, Pt. B, §9 (AMD).]

SECTION HISTORY
1975, c. 258, §1 (RPR). 1975, c. 575, §28 (AMD). 1975, c. 771, §§350,351 (AMD). 1983, c. 176, §A12 (RPR). 1983, c. 812, §216 (AMD). 1985, c. 280, (AMD). 1985, c. 819, §§A29,30 (AMD). 1987, c. 195, §6 (AMD). 1989, c. 503, §B133 (AMD). 1993, c. 600, §A120 (AMD). 2007, c. 695, Pt. B, §9 (AMD).

§2152. QUALIFICATIONS

Each member of the board must be a citizen of the United States and a resident of this State for at least 3 consecutive years prior to appointment and shall file with the Secretary of State an oath of office before beginning service. The board is composed of: [1993, c. 600, Pt. A, §121 (AMD).]

1. **Professional nurses.** Six professional nurses, each of whom:

A. Must be a graduate of a state-approved educational program in professional nursing; [1985, c. 724, §13 (RPR).]

B. Holds a current state license to practice nursing; and [1993, c. 600, Pt. A, §121 (AMD).]

C. Has at least 3 years' experience in active practice immediately preceding appointment. [1985, c. 724, §13 (RPR).]

A minimum of 2 professional nurses must be active in an approved educational program in nursing. A minimum of 2 professional nurses must be active in nursing service. One of the professional nurse members of the board must be practicing long-term care nursing. One of the professional nurse members of the board must be an advanced practice registered nurse;

[1995, c. 379, §6 (AMD) .]

2. **Licensed practical nurse.** One licensed practical nurse who:

A. Must be a graduate of a state-approved educational program in practical nursing; [1993, c. 600, Pt. A, §121 (AMD).]

B. Holds a current state license to practice practical nursing; and [1993, c. 600, Pt. A, §121 (AMD).]

C. Has at least 3 years' experience in active practice immediately preceding appointment; and [1985, c. 724, §13 (NEW).]

[1995, c. 379, §6 (AMD) .]

3. **Public members.** Two public members. A person may not qualify for appointment as a public member of the board if that person or a member of that person's immediate family is serving as:

A. A member of another state licensing board; [1993, c. 600, Pt. A, §121 (AMD).]

B. On the board of another health care agency; and [1993, c. 600, Pt. A, §121 (AMD).]

C. Engaged for compensation in the provision of health services or the provision of health research, instruction or insurance. [1985, c. 724, §13 (NEW).]

[1993, c. 600, Pt. A, §121 (AMD) .]

SECTION HISTORY
1975, c. 258, §2 (RPR). 1985, c. 724, §13 (RPR). 1993, c. 600, §A121 (AMD). 1995, c. 379, §6 (AMD).

§2153. POWERS AND DUTIES

(REPEALED)

SECTION HISTORY
1969, c. 552, §3 (AMD). 1971, c. 328, §2 (AMD). 1975, c. 575, §29 (AMD). 1977, c. 78, §179 (AMD). 1977, c. 604, §§20,21 (AMD). 1985, c. 724, §§14,15 (AMD). 1985, c. 748, §42 (AMD). 1985, c. 819, §§A31,32 (AMD). 1993, c. 600, §A122 (RP). 1993, c. 659, §§B8,9 (AMD). 1995, c. 462, §A89 (AFF).

§2153-A. POWERS AND DUTIES

The board shall hold annual meetings at which it shall elect from its members a chair and a secretary. It may hold such other meetings during the year as it determines necessary to transact its business. Special meetings must be called by the secretary on the request of 2 members. Five members of the board constitute a quorum at a meeting. [1993, c. 600, Pt. A, §123 (NEW).]

The board: [1993, c. 600, Pt. A, §123 (NEW).]

1. **Bylaws.** May adopt bylaws, rules for the transaction of the business of the board and the government and management of its affairs, not inconsistent with the laws of this State and of the United States, as it considers expedient;

[1993, c. 600, Pt. A, §123 (NEW) .]

2. **Seal.** May adopt a seal, which must be placed in the care of the executive director;

[1993, c. 600, Pt. A, §123 (NEW) .]

3. **Curricula.** May prescribe curricula and standards for educational programs preparing individuals for licensure under this chapter;

[1993, c. 600, Pt. A, §123 (NEW) .]

4. **Surveys.** May provide for surveys of the programs described in subsection 3 as it determines necessary;

[1993, c. 600, Pt. A, §123 (NEW) .]

5. **Approval.** May approve such nursing educational programs within the State as meet the requirements of this chapter and of the board;

[1993, c. 600, Pt. A, §123 (NEW) .]

6. **Denial.** May place nursing educational programs on probation, or warn, or deny, condition, withdraw or discontinue approval from nursing educational programs for failure to meet approved curricula or other standards as established by this chapter or pursuant to law;

[1993, c. 600, Pt. A, §123 (NEW) .]

7. **Licenses.** May examine, license and renew the licenses of qualified applicants;

[1993, c. 600, Pt. A, §123 (NEW) .]

8. **Prosecution.** May cause the prosecution and enjoinder of individuals violating this chapter and incur necessary expenses for those activities;

[1993, c. 600, Pt. A, §123 (NEW) .]

9. **Records.** May keep a record of all its proceedings;

[1993, c. 600, Pt. A, §123 (NEW) .]

10. **Report.** May make an annual report to the Commissioner of Professional and Financial Regulation for each fiscal year showing its receipts and disbursements and giving a full account of its activities during the previous 12-month period;

[1993, c. 600, Pt. A, §123 (NEW) .]

11. **Budget.** Shall submit to the Commissioner of Professional and Financial Regulation its budgetary requirements in the same manner as is provided in Title 5, section 1665, and the commissioner shall in turn transmit these requirements to the Bureau of the Budget without any revision, alteration or change unless alterations are mutually agreed upon by the Department of Professional and Financial Regulation and the board or the board's designee. The budget submitted by the board to the commissioner must be sufficient to enable the board to comply with this subchapter;

[1995, c. 625, Pt. A, §37 (RPR) .]

12. **Executive and assistant director.** May appoint and employ qualified individuals, not members of the board, to serve as executive director and assistant executive director to the board, fix their compensation and define their duties;

[1993, c. 600, Pt. A, §123 (NEW) .]

13. **Other employees.** May employ other individuals as may be necessary to carry out the work of the board;

[2011, c. 1, Pt. AA, §2 (AMD) .]

14. **Funds.** May set aside and budget funds for, make contracts for, and procure goods or services the board determines necessary to accomplish its duties under this chapter; and

[2011, c. 1, Pt. AA, §3 (AMD) .]

15. **Accept federal funds.** Notwithstanding section 2156, may accept for the State any federal funds appropriated under any federal law relating to the authorized programs of the board. The board may undertake the necessary duties and tasks to implement federal law with respect to the authorized programs of the board.

[2011, c. 1, Pt. AA, §4 (NEW) .]

SECTION HISTORY
1993, c. 600, §A123 (NEW). 1995, c. 397, §§41,42 (AMD). 1995, c. 462, §§A56,57 (AMD). 1995, c. 625, §§A37,38 (AMD). 2005, c. 163, §3 (AMD). 2011, c. 1, Pt. AA, §§2-4 (AMD).

§2153-B. LIAISON; LIMITATIONS

The Commissioner of Professional and Financial Regulation shall act as a liaison between the board and the Governor. The commissioner may not exercise or interfere with the exercise of discretionary, regulatory or licensing authority granted by statute to the board. The commissioner may require the board to be accessible to the public for complaints and questions during regular business hours and to provide any information the commissioner requires in order to ensure that the board is operating administratively within the requirements of this chapter. [2005, c. 163, §4 (NEW).]

SECTION HISTORY
2005, c. 163, §4 (NEW).

§2154. QUALIFICATIONS OF EXECUTIVE EMPLOYEE

The executive director must meet all the qualifications for professional nurse board members required in section 2152 and must, in addition, hold a master's degree in nursing. [1993, c. 600, Pt. A, §124 (AMD).]

SECTION HISTORY
1975, c. 258, §3 (AMD). 1985, c. 724, §16 (AMD). 1993, c. 600, §A124 (AMD).

§2155. COMPENSATION

Eligible members of the board shall be compensated according to the provisions of Title 5, chapter 379. [1985, c. 724, §17 (AMD).]

SECTION HISTORY
1979, c. 39, (RPR). 1983, c. 812, §217 (AMD). 1985, c. 724, §17 (AMD).

§2156. DISPOSITION OF FUNDS

All money received by the board under this chapter must be paid to the Treasurer of State. The Treasurer of State shall place the money to the credit of the State Board of Nursing Fund. All amounts paid into this fund must be held subject to the order of the board to be used only for the expenses incurred in the performance of the purpose of this chapter and the duties imposed by it as well as the promotion of nursing education and standards of nursing care in this State. [1993, c. 600, Pt. A, §125 (AMD).]

SECTION HISTORY
1993, c. 600, §A125 (AMD).

§2157. NURSING EDUCATION MOBILITY ADVISORY GROUP

(REPEALED)

SECTION HISTORY
1989, c. 609, §2 (NEW). 1991, c. 622, §S32 (RP).

Subchapter 3: REGISTERED NURSES

§2201. QUALIFICATIONS

An applicant for a license to practice professional nursing shall submit to the board written evidence, verified by oath, that the applicant:

1. **Character.**

[1983, c. 378, §22 (RP) .]

2. **High school.**

[2003, c. 204, Pt. H, §5 (RP) .]

3. **Professional school.** Has completed a course of study of not less than 2 years in an approved program in professional nursing and holds a degree, diploma or certificate.

In case of transfer of a student from one approved school of nursing to another, the time allowance for previous preparation must be determined by the board, except that not less than one year must have been spent in the school from which the diploma is received. In case of transfer of a student because of closing of a school of nursing, the board shall determine the length of time required to be spent in the school of nursing granting the diploma.

[1993, c. 600, Pt. A, §126 (AMD) .]

SECTION HISTORY
1983, c. 378, §22 (AMD). 1985, c. 724, §18 (AMD). 1987, c. 402, §A169 (AMD). 1993, c. 600, §A126 (AMD). 2003, c. 204, §H5 (AMD).

§2201-A. QUALIFICATIONS FOR ADVANCED PRACTICE REGISTERED NURSE

An applicant for approval to practice advanced practice registered nursing shall submit to the board written evidence verified by oath that the applicant: [1995, c. 379, §7 (NEW); 1995, c. 379, §11 (AFF).]

1. **License.** Holds a current license to practice as a registered professional nurse in this State;

[1995, c. 379, §7 (NEW); 1995, c. 379, §11 (AFF) .]

2. **Education.** Has successfully completed a formal education program that is acceptable to the board in an advanced nursing specialty area; and

[1995, c. 379, §7 (NEW); 1995, c. 379, §11 (AFF) .]

3. **Credential.** Holds a current certification credential for advanced nursing from a national certifying body whose certification program is acceptable to the board.

[1995, c. 379, §7 (NEW); 1995, c. 379, §11 (AFF) .]

A registered professional nurse who is approved by the board to practice in accordance with former section 2102, subsection 2, paragraph B on the effective date of this section is considered to have met the requirements of subsections 2 and 3. [1995, c. 379, §7 (NEW); 1995, c. 379, §11 (AFF).]

SECTION HISTORY
1995, c. 379, §7 (NEW). 1995, c. 379, §11 (AFF).

§2202. LICENSES; EXAMINATION

The applicant is required to pass a written examination in subjects determined necessary by the board to ascertain the fitness of the applicant to practice professional nursing. If the applicant successfully passes the examination, the board shall issue to the applicant a license to practice professional nursing as a registered nurse, the license to be in force for a period of at least one year until the birth date of the licensee. The initial license is renewable as provided in section 2206. [1993, c. 600, Pt. A, §127 (AMD).]

SECTION HISTORY
1985, c. 724, §19 (AMD). 1991, c. 153, §1 (AMD). 1991, c. 153, §5 (AFF). 1993, c. 600, §A127 (AMD).

§2202-A. CERTIFICATES; NURSING ASSISTANTS

(REPEALED)

SECTION HISTORY
1987, c. 195, §5 (NEW). 1989, c. 700, §A146 (AMD). 1991, c. 421, §5 (RP).

§2202-B. CERTIFICATION FEE; DISPOSITION OF FEE; NURSING ASSISTANTS

1. **Fees authorized.** The Commissioner of Health and Human Services may assess fees for certification of nursing assistants, for the competency testing of nursing assistants and for validation of test results to determine eligibility for certification and charge fees for certificates issued and duplicated for out-of-state vocational reciprocity, renewal of certificates and replacement of certificates.

[2009, c. 628, §4 (AMD) .]

2. **Amounts.** Amounts of fees are as follows:

A. For competency testing, $45, which must be included in the training course fee; [2009, c. 628, §4 (AMD).]

B. For initial certificate, $5; [1991, c. 528, Pt. III, §24 (NEW); 1991, c. 528, Pt. RRR, (AFF); 1991, c. 591, Pt. III, §24 (NEW).]

C. For replacement certificate, $5; [1991, c. 528, Pt. III, §24 (NEW); 1991, c. 528, Pt. RRR, (AFF); 1991, c. 591, Pt. III, §24 (NEW).]

D. For letter of verification of completion of a certified nursing assistant program, $20; [2009, c. 628, §4 (AMD).]

E. For converted certificate, $5; [1993, c. 435, §12 (AMD).]

F. For renewal certificate, $5; and [1993, c. 435, §12 (AMD).]

G. For validation of test results, $5. [1993, c. 435, §13 (NEW).]

[2009, c. 628, §4 (AMD) .]

3. **Accounting.** The Commissioner of Health and Human Services shall:

A. Collect and account for testing and certification fees; and [1991, c. 528, Pt. III, §24 (NEW); 1991, c. 528, Pt. RRR, (AFF); 1991, c. 591, Pt. III, §24 (NEW).]

B. Report and pay fees to the Treasurer of State to be credited to the General Fund. [1991, c. 528, Pt. III, §24 (NEW); 1991, c. 528, Pt. RRR, (AFF); 1991, c. 591, Pt. III, §24 (NEW).]

[2009, c. 628, §4 (AMD) .]

4. **Staff.** The Commissioner of Health and Human Services shall employ staff necessary to carry out the requirements of this section.

[2009, c. 628, §4 (AMD) .]

SECTION HISTORY
1991, c. 528, §III24 (NEW). 1991, c. 528, §RRR (AFF). 1991, c. 591, §III24 (NEW). 1993, c. 435, §§11-13 (AMD). 2009, c. 628, §4 (AMD).

§2203. -- PLACE

(REPEALED)

SECTION HISTORY
2005, c. 163, §5 (RP).

§2204. EXAMINATION; TIME

The board shall hold at least one examination annually at a place and at a time determined by the board. [1993, c. 600, Pt. A, §128 (AMD).]

SECTION HISTORY
1993, c. 600, §A128 (AMD).

§2205. -- ENDORSEMENT

(REPEALED)

SECTION HISTORY
1985, c. 361, §1 (RP).

§2205-A. LICENSURE OF PERSONS LICENSED BY ANOTHER JURISDICTION

The board may issue a license to practice professional nursing as a registered professional nurse under the following circumstances. [1985, c. 361, §2 (NEW).]

1. **Applicants licensed by other states, United States territories and Canadian provinces.** The board may issue a license without examination of the applicant by the board to an applicant licensed to practice by a state or territory of the United States or a province of Canada if the applicant:

A. Has graduated from an educational program approved by the official approving authority of a state or territory of the United States or a province of Canada, which at the time of graduation had standards considered by the board to be equivalent to those of Maine schools; [1985, c. 361, §2 (NEW).]

B. Has been duly licensed by examination by the nursing board of a state or territory of the United States or a province of Canada, provided that the examination is considered by the board to be equivalent in all essentials to Maine's examination and provided that the license of the applicant is in good standing and that there is no cause for suspension or revocation of that license. Acceptable examinations include the State Board Examination, State Board Test Pool Examination, the National Council Licensure Examination and, for a person licensed prior to December 31, 2006, the Canadian Nurses' Association Testing Service Examination; and [2005, c. 473, §1 (AMD).]

C. If licensed in the other jurisdiction by passing an examination in a language other than English, has passed the Test of English as a Foreign Language. The board shall provide information regarding the test to applicants who are required to take that test. [1985, c. 361, §2 (NEW).]

[2005, c. 473, §1 (AMD) .]

2. **Applicants licensed by other jurisdictions.** The board may issue a license to an applicant licensed to practice by a jurisdiction other than those listed in subsection 1, if the applicant:

A. Has graduated from an educational program approved by the official approving authority of a jurisdiction other than those listed in subsection 1, which at the time of graduation had standards considered by the board to be equivalent to those of Maine schools; [1985, c. 361, §2 (NEW).]

B. Has been duly licensed by examination by the nursing board of a jurisdiction other than those listed in subsection 1, provided that the examination is considered by the board to be equivalent in all essentials to Maine's examination and provided that the license of the applicant is in good standing and that there is no cause for suspension or revocation of that license; [1985, c. 361, §2 (NEW).]

C. Has passed the National Council Licensure Examination for registered nurses; and [1985, c. 361, §2 (NEW).]

D. If licensed in the other jurisdiction by passing an examination in a language other than English, has either passed the Test of English as a Foreign Language or fulfilled the requirements of paragraph C by passing a test given in English. [1985, c. 361, §2 (NEW).]

[1985, c. 361, §2 (NEW) .]

SECTION HISTORY
1985, c. 361, §2 (NEW). 2005, c. 473, §1 (AMD).

§2205-B. APPROVAL AS ADVANCED PRACTICE REGISTERED NURSES

The board may grant approval to practice as an advanced practice registered nurse to a person who qualifies pursuant to section 2201-A. [1995, c. 379, §8 (NEW); 1995, c. 379, §11 (AFF).]

1. **Temporary approval to practice.** Temporary approval to practice as an advanced practice registered nurse may be granted by the board:

A. For a period of 90 days to an applicant who is currently approved to practice as an advanced practice registered nurse in another jurisdiction with requirements at least equivalent to those of this State; or [1995, c. 379, §8 (NEW); 1995, c. 379, §11 (AFF).]

B. For a period of 12 months to an applicant who meets the requirements of section 2201-A, subsections 1 and 2 and who qualifies to take and takes the next available certification examination. [1995, c. 379, §8 (NEW); 1995, c. 379, §11 (AFF).]

[1995, c. 379, §8 (NEW); 1995, c. 379, §11 (AFF) .]

2. **Termination.** The board may terminate a person's advanced practice registered nurse designation when the person no longer holds a current certification credential.

[1995, c. 379, §8 (NEW); 1995, c. 379, §11 (AFF) .]

3. **Delegated performance of services.**

[2009, c. 512, §1 (RP) .]

4. **Supervision of support staff.** A certified nurse practitioner may delegate to the employees or support staff of the certified nurse practitioner certain activities relating to advanced practice registered nursing carried out by custom and usage when the activities are under the control of the certified nurse practitioner. The certified nurse practitioner delegating these activities to such persons is legally liable for the activities of those persons, and any person in this relationship is considered the certified nurse practitioner's agent when performing such delegated activities.

[2007, c. 197, §1 (NEW) .]

5. **Global signature authority of a certified nurse practitioner or certified nurse midwife.** When a provision of law or rule requires a signature, certification, stamp, verification, affidavit or endorsement by a physician, that requirement may be fulfilled by a certified nurse practitioner or a certified nurse midwife. This subsection may not be construed to expand the scope of practice of a certified nurse practitioner or a certified nurse midwife.

[2009, c. 259, §1 (NEW) .]

SECTION HISTORY
1995, c. 379, §8 (NEW). 1995, c. 379, §11 (AFF). 2007, c. 197, §1 (AMD). 2009, c. 259, §1 (AMD). 2009, c. 512, §1 (AMD).

§2206. RENEWALS

The license of every registered nurse licensed under this chapter is renewable every 2 years, except as otherwise provided. At least 30 days before the date that the license expires, the board shall mail an application for renewal of license to each professional nurse who holds a valid license. The application must be mailed to the most recent address of that individual as it appears on the records of the board. That individual shall complete the renewal application and return it to the board with the renewal fee designated by the board, but not to exceed $100, before the expiration date of the license. Upon receipt of the application and fee, the board shall verify the accuracy of the application and issue to the applicant a renewal of license for a period of 2 years, expiring on the anniversary of the applicant's birth. [1993, c. 600, Pt. A, §129 (AMD).]

A registered nurse who fails to renew the license as provided may be reinstated by the board on satisfactory explanation for failure to renew the license and on payment of a reinstatement fee of $10 in addition to the current renewal fee. [1993, c. 600, Pt. A, §129 (AMD).]

An individual practicing professional nursing during the time the individual's license has lapsed is considered an illegal practitioner and is subject to the penalties provided for violations of this chapter. [1993, c. 600, Pt. A, §129 (AMD).]

An individual who is not engaged in professional nursing in the State is not required to pay a renewal fee for as long as the individual does not practice but shall notify the board of inactive status in writing. Prior to resumption of the practice of professional nursing, that individual is required to notify the board and remit a renewal fee for the current period. [1993, c. 600, Pt. A, §129 (AMD).]

SECTION HISTORY

1965, c. 206, §1 (AMD). 1969, c. 26, §§1,2 (AMD). 1975, c. 114, §§1,2 (AMD). 1983, c. 176, §A13 (RPR). 1985, c. 724, §§20,21 (AMD). 1989, c. 609, §§3,4 (AMD). 1991, c. 153, §2 (AMD). 1991, c. 153, §5 (AFF). 1993, c. 600, §A129 (AMD).

§2207. REGISTERED NURSE; FEES

Every applicant applying for a license to practice as a registered nurse shall pay a fee to the board as follows:

1. **Examination.** For examination, a fee not to exceed $100 payable on application;

[1993, c. 600, Pt. A, §130 (AMD) .]

2. **Reexamination.** For reexamination, a fee determined by the board not to exceed $100; and

[2005, c. 163, §6 (AMD) .]

3. **Endorsement.** For endorsement, a fee not to exceed $100 payable on application.

[1993, c. 600, Pt. A, §130 (AMD) .]

SECTION HISTORY
1965, c. 206, §2 (AMD). 1973, c. 283, (AMD). 1975, c. 114, §3 (AMD). 1989, c. 609, §5 (AMD). 1993, c. 600, §A130 (AMD). 2005, c. 163, §6 (AMD).

§2208. TITLE AND ABBREVIATION

An individual who holds a current license to practice professional nursing in this State has the right to use the title "Registered Nurse" and the abbreviation "R.N." No other individual may assume the title or use the abbreviation or other words, letters, signs or devices to indicate that the individual using the same is a registered nurse. [1993, c. 600, Pt. A, §131 (AMD).]

SECTION HISTORY
1985, c. 724, §22 (AMD). 1993, c. 600, §A131 (AMD).

§2209. REGISTRATION UNDER PRIOR LAW

An individual holding a license as a registered nurse in the State issued by the former Board of Registration of Nurses that is valid on September 12, 1959 is licensed as a registered nurse under this chapter, and the renewal of the licenses for those individuals must be effectuated under this section. [1993, c. 600, Pt. A, §132 (AMD).]

SECTION HISTORY
1993, c. 600, §A132 (AMD).

Subchapter 4: PRACTICAL NURSES

§2251. QUALIFICATIONS

(REPEALED)

SECTION HISTORY
1965, c. 206, §§3,4 (AMD). 1967, c. 263, §6 (AMD). 1971, c. 601, §§1,2 (AMD). 1983, c. 378, §23 (AMD). 1985, c. 724, §23 (RP).

§2251-A. QUALIFICATIONS

An applicant for a license to practice as a licensed practical nurse shall submit to the board written evidence, verified by oath, that the applicant has the following qualifications. [1985, c. 724, §24 (NEW).]

1. **Education.**

[2003, c. 204, Pt. H, §6 (RP) .]

2. **Approved program.** The applicant must have completed a prescribed curriculum in a state-approved program for the preparation of practical nurses and holds a diploma or certificate.

[1985, c. 724, §24 (NEW) .]

SECTION HISTORY
1985, c. 724, §24 (NEW). 1993, c. 600, §A133 (AMD). 2003, c. 204, §H6 (AMD).

§2252. LICENSE; EXAMINATION

The applicant is required to pass a written examination in subjects considered necessary by the board to determine the fitness of the applicant to practice practical nursing. Upon the applicant's successfully passing the examination, the board shall issue to the applicant a license to practice as a licensed practical nurse, that license to be in force for a period of at least one year until the birth date of the licensee. The initial license is renewable as provided in section 2255. [2005, c. 163, §7 (AMD).]

SECTION HISTORY
1983, c. 553, §46 (AMD). 1985, c. 724, §25 (AMD). 1991, c. 153, §3 (AMD). 1991, c. 153, §5 (AFF). 2005, c. 163, §7 (AMD).

§2253. -- TIME AND PLACE

Time and place of examination shall be as provided in subchapter 3.

§2254. -- ENDORSEMENT

(REPEALED)

SECTION HISTORY
1985, c. 361, §3 (RP).

§2254-A. LICENSURE OF PERSONS LICENSED BY ANOTHER JURISDICTION

The board may issue a license to practice as a licensed practical nurse under the following circumstances: [1985, c. 361, §4 (NEW).]

1. **Applicants licensed by other states, United States territories and Canadian provinces.** The board may issue a license without examination of the applicant by the board to an applicant licensed to practice by a state or territory of the United States or a province of Canada if the applicant:

A. Has graduated from an educational program approved by the official approving authority of a state or territory of the United States or a province of Canada, which at the time of graduation had standards considered by the board to be equivalent to those of Maine schools; [1985, c. 361, §4 (NEW).]

B. Has been duly licensed by examination by the nursing board of a state or territory of the United States or a province of Canada, provided that the examination is considered by the board to be equivalent in all essentials to Maine's examination and provided that the license of the applicant is in good standing and that there is no cause for suspension or revocation of that license. Acceptable examinations include the State Board Test Pool Examination, the National Council Licensure Examination and, for a person licensed prior to December 31, 2006, the Canadian Nurses' Association Testing Service Examination; and [2005, c. 473, §2 (AMD).]

C. If licensed in the other jurisdiction by passing an examination in a language other than English, has passed the Test of English as a Foreign Language. The board shall provide information regarding the test to applicants who are required to take that test. [1985, c. 361, §4 (NEW).]

[2005, c. 473, §2 (AMD) .]

2. **Applicants licensed by other jurisdictions.** The board may issue a license to an applicant licensed to practice by a jurisdiction other than those listed in subsection 1, if the applicant:

A. Has graduated from an educational program approved by the official approving authority of a jurisdiction other than those listed in subsection 1, which at the time of graduation had standards considered by the board to be equivalent to those of Maine schools; [1985, c. 361, §4 (NEW).]

B. Has been duly licensed by examination by the nursing board of a jurisdiction other than those listed in subsection 1, provided that the examination is considered by the board to be equivalent in all essentials to Maine's examination and provided that the license of the applicant is in good standing and that there is no cause for suspension or revocation of that license; [1985, c. 361, §4 (NEW).]

C. Has passed the National Council Licensure Examination for practical nurses; and [1985, c. 361, §4 (NEW).]

D. If licensed in the other jurisdiction by passing an examination in a language other than English, has either passed the Test of English as a Foreign Language or fulfilled the requirements of paragraph C by passing a test given in English. [1985, c. 361, §4 (NEW).]

[1985, c. 361, §4 (NEW) .]

SECTION HISTORY
1985, c. 361, §4 (NEW). 2005, c. 473, §2 (AMD).

§2255. RENEWALS

The license of every practical nurse licensed under this chapter is renewable every 2 years, except as otherwise provided. At least 30 days before the date that the license expires, the board shall mail an application for renewal of license to each practical nurse who holds a valid license. The application must be mailed to the most recent address of that individual as it appears on the records of the board. That individual shall complete the renewal application and return it to the board with the renewal fee designated by the board, but not to exceed $100, before the expiration date of the license. Upon receipt of the application and fee, the board shall verify the accuracy of the application and issue to the applicant a renewal of license for a period of 2 years, expiring on the anniversary of the applicant's birth. [1993, c. 600, Pt. A, §134 (AMD).]

A practical nurse who fails to renew the license as provided may be reinstated by the board on satisfactory explanation for failure to renew the license and on payment of a reinstatement fee of $10 in addition to the renewal fee. [1993, c. 600, Pt. A, §134 (AMD).]

An individual practicing nursing as a licensed practical nurse during the time the individual's license has lapsed is considered an illegal practitioner and is subject to the penalties provided for violations of this chapter. [1993, c. 600, Pt. A, §134 (AMD).]

An individual who is not engaged in practical nursing in the State is not required to pay a renewal fee as long as the individual does not practice but shall notify the board of inactive status in writing prior to the expiration date of that individual's current license. Before the resumption of practice as a licensed practical nurse and transfer to active status, that individual is required to notify the board, complete a renewal application and remit the current renewal fee. [1993, c. 600, Pt. A, §134 (AMD).]

SECTION HISTORY
1965, c. 206, §§5,6 (AMD). 1969, c. 26, §§3,4 (AMD). 1975, c. 114, §§4,5 (AMD). 1983, c. 176, §A14 (RPR). 1985, c. 724, §§26,27 (AMD). 1989, c. 609, §§6,7 (AMD). 1991, c. 153, §4 (AMD). 1991, c. 153, §5 (AFF). 1993, c. 600, §A134 (AMD).

§2256. LICENSED PRACTICAL NURSE; FEES

Every applicant applying for a license to practice as a licensed practical nurse shall pay a fee to the board as follows:

1. **Examination.** For examination, a fee not to exceed $100 payable on application;

[1993, c. 600, Pt. A, §135 (AMD) .]

2. **Reexamination.** For reexamination, a fee to be determined by the board not to exceed $100; and

[1993, c. 600, Pt. A, §135 (AMD) .]

3. **Endorsement.** For endorsement, a fee not to exceed $100 payable on application.

[1993, c. 600, Pt. A, §135 (AMD) .]

SECTION HISTORY
1965, c. 206, §7 (AMD). 1969, c. 26, §5 (AMD). 1975, c. 114, §§6,7 (AMD). 1989, c. 609, §§8,9 (AMD). 1993, c. 600, §A135 (AMD).

§2257. TITLE AND ABBREVIATION

An individual who holds a current license to practice as a licensed practical nurse in this State has the right to use the title "Licensed Practical Nurse" and abbreviation "L.P.N." No other individual may assume that title or use that abbreviation or other words, letters, signs or figures to indicate that the individual using the same is a licensed practical nurse. [1993, c. 600, Pt. A, §136 (AMD).]

SECTION HISTORY
1985, c. 724, §28 (AMD). 1993, c. 600, §A136 (AMD).

§2258. REGISTRATION UNDER PRIOR LAW

An individual holding a license as a licensed practical nurse in the State issued by the former Board of Registration of Nurses that is valid on September 12, 1959 is licensed as a licensed practical nurse under this chapter, and the renewal of the licenses for those individuals must be effectuated under this subchapter. [2009, c. 2, §88 (COR).]

SECTION HISTORY
1993, c. 600, §A137 (AMD). RR 2009, c. 2, §88 (COR).

§2258-A. ADMINISTRATION OF MEDICATION

Any employee of an institution under the control of the Department of Health and Human Services or of an institution licensed by the State as a hospital, nursing home, extended care facility or boarding home who, in the exercise of due care, is authorized by the head of that institution or a designee to perform selected activities in the administration of medications and any individual who, in the exercise of due care, is delegated those functions by a licensed allopathic or osteopathic physician is immune from criminal prosecution and civil liability for that administration of medication prior to January 1, 1978 but not after January 1, 1978.
[1995, c. 560, Pt. K, §82 (AMD); 1995, c. 560, Pt. K, §83 (AFF); 2001, c. 354, §3 (AMD); 2003, c. 689, Pt. B, §6 (REV).]

SECTION HISTORY
1973, c. 535, (NEW). 1973, c. 737, §2 (AMD). 1975, c. 698, §5 (AMD). 1977, c. 497, §11 (AMD). 1993, c. 600, §A138 (AMD). 1995, c. 560, §K82 (AMD). 1995, c. 560, §K83 (AFF). 2001, c. 354, §3 (AMD). 2003, c. 689, §B6 (REV).

§2259. WAIVER

(REPEALED)

SECTION HISTORY
1967, c. 263, §7 (NEW). 1971, c. 601, §3 (RP). 1971, c. 622, §117 (RP).

Subchapter 5: COMMISSION ON NURSING SUPPLY AND EDUCATIONAL ACCESSIBILITY

§2261. COMMISSION

(REPEALED)

SECTION HISTORY
1985, c. 724, §29 (NEW). 1985, c. 819, §§A33-36 (AMD). 1987, c. 769, §A121 (AMD). 1989, c. 443, §§86,87 (AMD). 1999, c. 668, §119 (RP).

Subchapter 6: JOINT PRACTICE COUNCIL ON ADVANCED PRACTICE REGISTERED NURSING HEADING: PL 1995, C. 379, §9 (NEW)

§2265. COUNCIL

(REPEALED)

SECTION HISTORY
1995, c. 379, §9 (NEW). 1997, c. 245, §19 (AMD). 1999, c. 668, §120 (RP).

Chapter 32: OCCUPATIONAL THERAPISTS

§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. [1997, c. 294, §1 (AMD).]

SECTION HISTORY
1983, c. 746, §2 (NEW). 1997, c. 294, §1 (AMD).

§2272. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1997, c. 294, §2 (RPR).]

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.

[1997, c. 294, §2 (RPR) .]

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

[1997, c. 294, §2 (RPR) .]

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

[1997, c. 294, §2 (RPR) .]

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.

[1997, c. 294, §2 (RPR) .]

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.

A. [1997, c. 294, §2 (RP).]

B. [1997, c. 294, §2 (RP).]

C. [1997, c. 294, §2 (RP).]

[1997, c. 294, §2 (RPR) .]

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

[1997, c. 294, §2 (RPR) .]

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

[1997, c. 294, §2 (RPR) .]

7-A. **Occupational therapy practitioner.**

[1997, c. 683, Pt. B, §18 (RAL) .]

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

[1997, c. 294, §2 (RPR) .]

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.

[1997, c. 294, §2 (NEW) .]

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

[1997, c. 294, §2 (NEW) .]

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.

[1997, c. 294, §2 (NEW) .]

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; [1997, c. 294, §2 (NEW).]

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 [1997, c. 294, §2 (NEW).]

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. [1997, c. 294, §2 (NEW).]

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

[1997, c. 294, §2 (NEW) .]

12-A. **Occupational therapy practitioner.** "Occupational therapy practitioner" means an individual who is licensed as an occupational therapist registered or a certified occupational therapy assistant, both of whom are licensed occupational therapy practitioners under this chapter.

[1999, c. 386, Pt. I, §1 (AMD) .]

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

[1997, c. 294, §2 (NEW) .]

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.

[1997, c. 294, §2 (NEW) .]

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.

[1997, c. 294, §2 (NEW) .]

SECTION HISTORY
1983, c. 746, §2 (NEW). 1991, c. 509, §9 (AMD). RR 1993, c. 1, §87 (COR). 1997, c. 212, §1 (AMD). 1997, c. 294, §2 (RPR). 1997, c. 683, §B18 (AMD). 1999, c. 386, §I1 (AMD).

§2273. BOARD OF OCCUPATIONAL THERAPY PRACTICE; ESTABLISHMENT; COMPENSATION

1. **Establishment and membership.** There is established within the department, in accordance with Title 5, section 12004-A, subsection 26, a Board of Occupational Therapy Practice. The board consists of 5 members appointed by the Governor. Appointments of members must comply with Title 10, section 8009. The persons appointed to the board, other than the public member, must have been engaged in rendering occupational therapy services to the public, teaching or research in occupational therapy for at least 2 years immediately preceding their appointments. At least 3 board members must be occupational therapists. The 4th member must be either an occupational therapist or an occupational therapy assistant, if available. The remaining member must be a public member as defined in Title 5, section 12004-A. A member of the board may be removed from office for cause by the Governor.

[2007, c. 402, Pt. L, §1 (AMD) .]

2. **Terms of appointment.**

[2007, c. 402, Pt. L, §1 (RP) .]

3. **Meetings; chair.** 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 and may be convened at the call of the chair or a majority of the members of the board.

[2013, c. 246, Pt. B, §8 (AMD) .]

4. **Compensation.**

[1995, c. 397, §43 (RP) .]

SECTION HISTORY
1983, c. 746, §2 (NEW). 1983, c. 862, §§76,77 (AMD). 1989, c. 503, §B134 (AMD). 1993, c. 600, §A139 (AMD). 1995, c. 397, §43 (AMD). 2007, c. 402, Pt. L, §1 (AMD). 2013, c. 246, Pt. B, §8 (AMD).

§2274. BOARD OF OCCUPATIONAL THERAPY PRACTICE; POWERS AND DUTIES

1. **Powers.** The board shall administer and enforce this chapter and evaluate the qualifications of applicants for licensure.

[2007, c. 402, Pt. L, §2 (AMD) .]

2. **Rules.** The board may adopt, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, rules relating to professional conduct to carry out the policy of this chapter, including, but not limited to, rules relating to professional licensure and to the establishment of ethical standards of practice for persons holding a license to practice occupational therapy in this State.

[2007, c. 402, Pt. L, §2 (AMD) .]

3. **Hearings.**

[2007, c. 402, Pt. L, §2 (RP) .]

4. **Records.**

[2007, c. 402, Pt. L, §2 (RP) .]

5. **Contracts.**

[1995, c. 397, §44 (RP) .]

6. **Reports.**

[2007, c. 402, Pt. L, §2 (RP) .]

SECTION HISTORY
1983, c. 746, §2 (NEW). 1995, c. 397, §44 (AMD). 2007, c. 402, Pt. L, §2 (AMD).

§2275. BOARD OF OCCUPATIONAL THERAPY PRACTICE; ADMINISTRATIVE PROVISIONS

(REPEALED)

SECTION HISTORY
1983, c. 746, §2 (NEW). 1985, c. 785, §B134 (AMD). 1995, c. 397, §§45,46 (AMD). 2007, c. 402, Pt. L, §3 (RP).

§2276. LICENSE REQUIRED

1. **License required.**

[1997, c. 294, §3 (RP) .]

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 therapy assistant 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.R.," "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 that 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.

[1999, c. 386, Pt. I, §2 (AMD) .]

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

[1983, c. 746, §2 (NEW) .]

3. **Unlicensed practice.** A person who violates this section is subject to the provisions of Title 10, section 8003-C.

[2007, c. 402, Pt. L, §4 (AMD) .]

SECTION HISTORY
1983, c. 746, §2 (NEW). 1987, c. 597, §4 (AMD). 1997, c. 294, §3 (AMD). 1999, c. 386, §I2 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2003, c. 452, §R4 (AMD). 2003, c. 452, §X2 (AFF). 2007, c. 402, Pt. L, §4 (AMD).

§2277. PERSONS AND PRACTICES EXEMPT

Nothing in this chapter may be construed as preventing or restricting the practice, services or activities of: [1983, c. 746, §2 (NEW).]

1. **Licensed persons.** Any person licensed in this State by any other law from engaging in the profession or occupation for which the person is licensed;

[1997, c. 294, §4 (AMD) .]

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 that clearly indicates that person's status as a student or trainee. 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.

[1997, c. 294, §4 (AMD) .]

3. **Supervised fieldworkers.**

[1997, c. 294, §4 (RP) .]

4. **Associates; reciprocity.**

[1991, c. 509, §11 (RP) .]

5. **Occupational therapy aides.**

[1991, c. 509, §11 (RP) .]

SECTION HISTORY
1983, c. 746, §2 (NEW). 1991, c. 509, §§10,11 (AMD). 1997, c. 294, §4 (AMD).

§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. [1997, c. 294, §5 (RPR).]

A temporary license may not be renewed more than once. [1997, c. 294, §5 (NEW).]

Foreign trained applicants must receive approval to sit for the examination from NBCOT in order to be eligible for a temporary license. [1997, c. 294, §5 (NEW).]

No more than one temporary license may be granted to a person who has completed the education requirements of this chapter. This license allows the holder to practice occupational therapy under the supervision of a licensed occupational therapist. This license must be issued for a term of 6 months and may be renewed for an additional 6 months at the discretion of the board. [2011, c. 286, Pt. G, §1 (NEW).]

SECTION HISTORY
1983, c. 746, §2 (NEW). 1991, c. 509, §12 (AMD). 1997, c. 294, §5 (RPR). 2011, c. 286, Pt. G, §1 (AMD).

§2279. QUALIFICATIONS

An applicant applying for a license as an occupational therapy practitioner must file a written application showing that the applicant meets the following requirements. [2007, c. 402, Pt. L, §5 (AMD).]

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

[1983, c. 746, §2 (NEW) .]

2. **Character.**

[1997, c. 294, §6 (RP) .]

2-A. **Character references.**

[2013, c. 217, Pt. J, §2 (RP) .]

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

A. The occupational therapy or occupational therapy assisting educational program must be accredited by ACOTE. [1997, c. 294, §6 (AMD).]

B. [1997, c. 294, §6 (RP).]

[1997, c. 294, §6 (AMD) .]

4. **Experience.**

[1997, c. 294, §6 (RP) .]

5. **Examination.** An applicant for licensure as an occupational therapy practitioner must pass an examination as provided for in section 2280-A.

[1997, c. 683, Pt. B, §20 (RPR) .]

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

[1997, c. 294, §6 (AMD) .]

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.

[1997, c. 294, §6 (NEW) .]

8. **Fee.** An applicant must pay an application fee and license fee as set under section 2285.

[2007, c. 402, Pt. L, §5 (AMD) .]

SECTION HISTORY
1983, c. 746, §2 (NEW). 1991, c. 509, §13 (AMD). 1997, c. 212, §§2,3 (AMD). 1997, c. 294, §6 (AMD). 1997, c. 683, §§B19,20 (AMD). 2007, c. 402, Pt. L, §5 (AMD). 2013, c. 217, Pt. J, §2 (AMD).

§2280. EXAMINATION FOR LICENSURE OF OCCUPATIONAL THERAPISTS AND OCCUPATIONAL THERAPY ASSISTANTS

(REPEALED)

SECTION HISTORY
1983, c. 746, §2 (NEW). 1991, c. 509, §14 (AMD). 1997, c. 294, §7 (RP).

§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. [2007, c. 402, Pt. L, §6 (AMD).]

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. [1997, c. 294, §8 (NEW).]

SECTION HISTORY
1997, c. 294, §8 (NEW). 2007, c. 402, Pt. L, §6 (AMD).

§2281. WAIVER OF REQUIREMENTS FOR LICENSURE

The board shall grant a license to any person who, prior to July 25, 1984, 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 and 3. [2013, c. 217, Pt. J, §3 (AMD).]

SECTION HISTORY
1983, c. 746, §2 (NEW). 1991, c. 509, §15 (AMD). 1997, c. 294, §9 (AMD). 2013, c. 217, Pt. J, §3 (AMD).

§2282. ISSUANCE OF LICENSE

The board shall issue a license to any person who meets the requirements of this chapter upon payment of the license fee as set under section 2285. [2007, c. 402, Pt. L, §7 (AMD).]

SECTION HISTORY
1983, c. 746, §2 (NEW). 2007, c. 402, Pt. L, §7 (AMD).

§2283. RENEWAL OF LICENSE

1. **Renewal.** A license renewal fee as set under section 2285 must be paid by the licensee. Licenses issued under this chapter are subject to renewal and expire on the stated expiration date as determined by the commissioner. Any license not renewed by the designated renewal date automatically expires. Licenses may be renewed up to 90 days after the date of expiration upon payment of a late fee in addition to the renewal fee as set under section 2285. Any person who submits an application for renewal more than 90 days after the date of expiration is subject to all requirements governing new applicants under this chapter, except that the board, giving due consideration to the protection of the public, may waive examination if that renewal application is received, together with the late fee and renewal fee, within 2 years from the date of the expiration.

[2007, c. 402, Pt. L, §8 (RPR) .]

2. **Inactive status.**

[1991, c. 509, §16 (RP) .]

3. **Continuing education.** Each license renewal must be accompanied with evidence of continuing education as established by board rule.

[1991, c. 509, §17 (AMD) .]

SECTION HISTORY
1983, c. 746, §2 (NEW). 1991, c. 509, §§16,17 (AMD). 1997, c. 294, §10 (AMD). 2007, c. 402, Pt. L, §8 (AMD).

§2284. FOREIGN-TRAINED APPLICANTS

Foreign-trained applicants are subject to the provisions of this section. [1997, c. 294, §11 (RPR).]

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

[1997, c. 294, §11 (NEW) .]

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

[1997, c. 294, §11 (NEW) .]

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

[1997, c. 294, §11 (NEW) .]

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.

[1997, c. 294, §11 (NEW) .]

5. **Fee.** Applicants must pay the application and license fees as set under section 2285.

[2007, c. 402, Pt. L, §9 (AMD) .]

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.

[1997, c. 294, §11 (NEW) .]

SECTION HISTORY
1983, c. 746, §2 (NEW). 1997, c. 294, §11 (RPR). 2007, c. 402, Pt. L, §9 (AMD).

§2285. FEES

The Director of the Office of Professional and Occupational Regulation within the department may establish by rule fees for purposes authorized under this chapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for any one purpose may not exceed $120. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [2007, c. 402, Pt. L, §10 (NEW); 2011, c. 286, Pt. B, §5 (REV).]

SECTION HISTORY
1983, c. 746, §2 (NEW). 1991, c. 509, §18 (AMD). 1995, c. 502, §H30 (AMD). 1997, c. 294, §13 (AMD). 2007, c. 402, Pt. L, §10 (RPR). 2011, c. 286, Pt. B, §5 (REV).

§2286. DISCIPLINARY ACTIONS

1. **Complaints.**

[2007, c. 402, Pt. L, §11 (RP) .]

2. **Disciplinary action.** The board may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A for any of the reasons enumerated in Title 10, section 8003, subsection 5-A, paragraph A.

[2007, c. 402, Pt. L, §12 (RPR) .]

3. **Reinstatement.** An application for reinstatement may be made to the board one year from the date of revocation of a license. The board may accept or reject an application for reinstatement and hold a hearing to consider the reinstatement.

[1983, c. 746, §2 (NEW) .]

SECTION HISTORY
1983, c. 746, §2 (NEW). 1997, c. 294, §14 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 402, Pt. L, §§11, 12 (AMD).

Chapter 33: OIL AND SOLID FUEL BOARD

Subchapter 1: GENERAL PROVISIONS

§2301. DEFINITIONS

(REPEALED)

SECTION HISTORY
1967, c. 249, §1 (RPR). 1973, c. 384, (RPR). 1975, c. 374, §3 (AMD). 1977, c. 356, §§2, 3 (AMD). 1977, c. 663, §1 (AMD). 1979, c. 569, §3 (RP).

§2301-A. APPROVAL PROCESS

(REPEALED)

SECTION HISTORY
1977, c. 663, §2 (NEW). 1979, c. 569, §3 (RP).

§2302. EXCEPTIONS

(REPEALED)

SECTION HISTORY
1977, c. 663, §2 (NEW). 1979, c. 569, §3 (RP).

§2303. INSTALLATIONS TO CONFORM TO STANDARDS

(REPEALED)

SECTION HISTORY
1967, c. 249, §4 (AMD). 1973, c. 384, (RPR). 1977, c. 356, §4 (AMD). 1979, c. 569, §3 (RP).

§2304. MUNICIPAL LICENSES NOT REQUIRED; MUNICIPAL PERMITS

(REPEALED)

SECTION HISTORY
1967, c. 249, §5 (RPR). 1973, c. 384, (RPR). 1979, c. 569, §3 (RP).

§2304-A. STATE OIL BURNER INSPECTORS

(REPEALED)

SECTION HISTORY
1967, c. 249, §6 (NEW). 1973, c. 384, (RPR). 1979, c. 569, §3 (RP).

§2304-B. FAILURE TO COMPLY WITH ORDER OF INSPECTOR

(REPEALED)

SECTION HISTORY
1967, c. 249, §6 (NEW). 1973, c. 384, (RPR). 1979, c. 569, §3 (RP).

§2305. VIOLATIONS; PENALTY

(REPEALED)

SECTION HISTORY
1967, c. 249, §7 (AMD). 1971, c. 592, §29 (AMD). 1973, c. 384, (RP). 1979, c. 569, §3 (RP).

§2306. FUNDS FOR ENFORCEMENT

(REPEALED)

SECTION HISTORY
1973, c. 384, (RP).

Subchapter 1-A: GENERAL PROVISIONS

§2311. DEFINITIONS

(REPEALED)

SECTION HISTORY
1979, c. 569, §4 (NEW). 1979, c. 606, §§7,8 (AMD). 1985, c. 389, §13 (AMD). 1989, c. 320, §1 (AMD). 1989, c. 443, §88 (AMD). 1991, c. 198, §§5-8 (AMD). 1991, c. 509, §§19-21 (AMD). 1991, c. 714, §10 (AMD). 1991, c. 716, §6 (AMD). 1993, c. 404, §A2 (AMD). 1997, c. 82, §§1,2 (AMD). 1999, c. 386, §§J1-5 (AMD). 2007, c. 402, Pt. M, §1 (AMD). 2009, c. 344, Pt. C, §1 (RP). 2009, c. 344, Pt. E, §2 (AFF).

§2312-B. MAJOR EQUIPMENT SALES INFORMATION

(REPEALED)

SECTION HISTORY
1995, c. 353, §22 (NEW). 2009, c. 344, Pt. C, §1 (RP). 2009, c. 344, Pt. E, §2 (AFF).

§2313. INSTALLATIONS TO CONFORM TO STANDARDS

(REPEALED)

SECTION HISTORY
1979, c. 569, §4 (NEW). 1989, c. 320, §2 (AMD). 1991, c. 198, §11 (AMD). 2009, c. 344, Pt. C, §1 (RP). 2009, c. 344, Pt. E, §2 (AFF).

§2313-A. DISCLOSURES; PENALTIES

(REPEALED)

SECTION HISTORY
RR 1991, c. 1, §46 (COR). 1991, c. 198, §12 (NEW). 2007, c. 402, Pt. M, §2 (AMD). 2009, c. 344, Pt. C, §1 (RP). 2009, c. 344, Pt. E, §2 (AFF).

§2314. MUNICIPAL LICENSES NOT REQUIRED; MUNICIPAL PERMITS

(REPEALED)

SECTION HISTORY

1979, c. 569, §4 (NEW). 2009, c. 344, Pt. C, §1 (RP). 2009, c. 344, Pt. E, §2 (AFF).

§2315. STATE OIL AND SOLID FUEL COMPLIANCE OFFICERS

(REPEALED)

SECTION HISTORY
1979, c. 569, §4 (NEW). 1979, c. 606, §10 (AMD). 1987, c. 395, §A168 (AMD). 1989, c. 320, §3 (AMD). 1991, c. 198, §13 (AMD). 1999, c. 386, §J8 (RPR). 1999, c. 657, §15 (AMD). 2007, c. 402, Pt. M, §§3, 4 (AMD). 2007, c. 621, §§5, 6 (AMD). 2009, c. 344, Pt. C, §1 (RP). 2009, c. 344, Pt. E, §2 (AFF).

§2316. FAILURE TO COMPLY WITH ORDER OF COMPLIANCE OFFICER

(REPEALED)

SECTION HISTORY
1979, c. 569, §4 (NEW). 1989, c. 320, §4 (AMD). 1991, c. 198, §14 (AMD). 2009, c. 344, Pt. C, §1 (RP). 2009, c. 344, Pt. E, §2 (AFF).

§2317. VIOLATIONS; PENALTIES

(REPEALED)

SECTION HISTORY
1979, c. 569, §4 (NEW). 1983, c. 413, §116 (AMD). 1997, c. 82, §3 (AMD). 1999, c. 386, §J9 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2003, c. 452, §X2 (AFF). 2003, c. 452, §R5 (RPR). 2007, c. 402, Pt. M, §§5, 6 (AMD). 2009, c. 344, Pt. C, §1 (RP). 2009, c. 344, Pt. E, §2 (AFF).

Subchapter 2: LICENSING BOARD

§2351. APPOINTMENT; VACANCIES; REMOVAL; COMPENSATION

(REPEALED)

SECTION HISTORY
1967, c. 249, §8 (AMD). 1969, c. 199, §§2-4 (AMD). 1971, c. 592, §30 (AMD). 1973, c. 384, (RPR). 1975, c. 575, §§30,31 (AMD). 1975, c. 579, §16 (AMD). 1975, c. 770, §183 (AMD). 1975, c. 771, §§352,353 (AMD). 1979, c. 569, §§5-7 (AMD). 1979, c. 606, §11 (AMD). 1983, c. 413, §117 (AMD). 1983, c. 553, §§36,37 (AMD). 1983, c. 812, §§218,219 (AMD). 1985, c. 506, §A68 (AMD). 1987, c. 395, §A169 (AMD). 1989, c. 503, §B135 (AMD). 1993, c. 600, §§A140,141 (AMD). 1993, c. 659, §§A5,6 (AMD). 1995, c. 397, §47 (AMD). 1999, c. 386, §J10 (AMD). 2001, c. 260, §§E1,2 (AMD). 2001, c. 633, §1 (AMD). 2007, c. 402, Pt. M, §7 (AMD). 2009, c. 344, Pt. C, §1 (RP). 2009, c. 344, Pt. E, §2 (AFF).

§2352. EMPLOYEES

(REPEALED)

SECTION HISTORY

1969, c. 199, §5 (AMD). 1971, c. 592, §31 (AMD). 1973, c. 384, (RPR). 1975, c. 579, §17 (AMD). 1979, c. 569, §8 (AMD). 1983, c. 413, §118 (AMD). 1985, c. 785, §B135 (AMD). 1987, c. 395, §A170 (AMD). 1991, c. 198, §15 (AMD). 1991, c. 509, §22 (AMD). 1999, c. 386, §J11 (AMD). 2007, c. 402, Pt. M, §8 (RP).

§2353. MEETINGS; CHAIR; QUORUM; RULES

(REPEALED)

SECTION HISTORY
1973, c. 384, (RPR). 1977, c. 356, §5 (AMD). 1977, c. 694, §591 (AMD). 1979, c. 569, §9 (AMD). 1983, c. 413, §119 (RPR). 1991, c. 198, §16 (AMD). 1999, c. 386, §J12 (AMD). 2007, c. 402, Pt. M, §9 (AMD). 2009, c. 344, Pt. C, §1 (RP). 2009, c. 344, Pt. E, §2 (AFF).

§2355. DENIAL OR REFUSAL TO RENEW LICENSE; DISCIPLINARY ACTION

(REPEALED)

SECTION HISTORY
1967, c. 249, §9 (AMD). 1973, c. 303, §3 (AMD). 1973, c. 384, (RPR). 1977, c. 694, §592 (AMD). 1979, c. 569, §§10,11 (AMD). 1983, c. 413, §120 (RPR). 1985, c. 389, §14 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 402, Pt. M, §10 (RPR). 2009, c. 344, Pt. C, §1 (RP). 2009, c. 344, Pt. E, §2 (AFF).

§2355-A. EMPLOYING UNLICENSED PERSON

(REPEALED)

SECTION HISTORY
2007, c. 402, Pt. M, §11 (NEW). 2009, c. 344, Pt. C, §1 (RP). 2009, c. 344, Pt. E, §2 (AFF).

§2356. RECORDS

(REPEALED)

SECTION HISTORY
1973, c. 384, (RPR). 1983, c. 413, §121 (RPR). 2007, c. 402, Pt. M, §12 (RP).

§2357. REPORTS

(REPEALED)

SECTION HISTORY
1975, c. 767, §40 (NEW). 1987, c. 395, §A171 (AMD). 2007, c. 402, Pt. M, §13 (RP).

§2358. HEARINGS

(REPEALED)

SECTION HISTORY
1983, c. 413, §122 (NEW). 2007, c. 402, Pt. M, §14 (RP).

Subchapter 3: LICENSES

§2401. LICENSE REQUIRED

(REPEALED)

SECTION HISTORY
1967, c. 249, §10 (RPR). 1973, c. 384, (RPR). 1979, c. 569, §12 (AMD). 2001, c. 633, §2 (AMD). 2003, c. 89, §1 (AMD). 2009, c. 344, Pt. C, §1 (RP). 2009, c. 344, Pt. E, §2 (AFF).

§2401-A. EXCEPTIONS

(REPEALED)

SECTION HISTORY
1979, c. 569, §13 (NEW). 1991, c. 198, §18 (AMD). 1995, c. 560, §H13 (AMD). 1995, c. 560, §H17 (AFF). 1997, c. 691, §1 (AMD). 1999, c. 127, §D5 (AFF). 1999, c. 386, §J13 (AMD). 2009, c. 344, Pt. C, §1 (RP). 2009, c. 344, Pt. E, §2 (AFF). MRSA T.32, §2401-A, sub-§4A (AMD).

§2401-B. ISSUANCE OF LICENSES

(REPEALED)

SECTION HISTORY
1999, c. 386, §J14 (NEW). 1999, c. 685, §2 (AMD). 2001, c. 260, §E3 (AMD). 2003, c. 11, §1 (AMD). 2003, c. 20, §OO2 (AMD). 2003, c. 20, §OO4 (AFF). 2003, c. 545, §5 (REV). 2007, c. 392, §1 (AMD). 2007, c. 402, Pt. M, §15 (AMD). 2009, c. 344, Pt. C, §1 (RP). 2009, c. 344, Pt. E, §2 (AFF).

§2402-A. RULES

(REPEALED)

SECTION HISTORY
1999, c. 386, §J16 (NEW). 2009, c. 250, §2 (AMD). 2009, c. 344, Pt. C, §1 (RP). 2009, c. 344, Pt. E, §2 (AFF). 2009, c. 652, Pt. A, §44 (RP).

§2402-B. FEES

(REPEALED)

SECTION HISTORY
1999, c. 386, §J16 (NEW). 1999, c. 685, §3 (RPR). 2001, c. 633, §3 (AMD). 2003, c. 89, §2 (AMD). 2007, c. 402, Pt. M, §16 (AMD). 2009, c. 344, Pt. C, §1 (RP). 2009, c. 344, Pt. E, §2 (AFF).

§2403. EXAMINATIONS

(REPEALED)

SECTION HISTORY

1967, c. 249, §11 (RPR). 1973, c. 384, (RPR). 1977, c. 356, §6 (AMD). 1979, c. 569, §17 (AMD). 1979, c. 606, §13 (AMD). 1983, c. 204, §8 (AMD). 1983, c. 413, §124 (AMD). 1983, c. 553, §38 (AMD). 1999, c. 386, §J17 (AMD). 2007, c. 402, Pt. M, §17 (AMD). 2009, c. 344, Pt. C, §1 (RP). 2009, c. 344, Pt. E, §2 (AFF).

§2404. RENEWALS

(REPEALED)

SECTION HISTORY
1967, c. 249, §11 (RPR). 1969, c. 231, §3 (AMD). 1973, c. 384, (RPR). 1975, c. 767, §42 (RPR). 1979, c. 569, §18 (AMD). 1983, c. 413, §125 (AMD). 1991, c. 198, §20 (AMD). 1997, c. 82, §5 (AMD). 1999, c. 685, §4 (AMD). 2007, c. 402, Pt. M, §18 (AMD). 2009, c. 344, Pt. C, §1 (RP). 2009, c. 344, Pt. E, §2 (AFF).

§2406. CORPORATIONS, FIRMS AND PARTNERSHIPS

(REPEALED)

SECTION HISTORY
1989, c. 320, §6 (NEW). 1999, c. 386, §J18 (AMD). 2009, c. 344, Pt. C, §1 (RP). 2009, c. 344, Pt. E, §2 (AFF).

Chapter 34-A: OPTOMETRISTS

Subchapter 1: GENERAL PROVISIONS

§2411. DEFINITIONS

1. **Practice of optometry.** The practice of optometry is defined as one or a combination of the following practices:

A. The examination of the eye and related structures without the use of invasive surgery or tissue-altering lasers to diagnose defects, abnormalities or diseases of the eye; [2009, c. 195, §1 (AMD).]

B. The determination of the accommodative or refractive states of the human eye and evaluation of visual functions; [1993, c. 600, Pt. A, §142 (AMD).]

C. The correction, treatment or referral of vision problems and ocular abnormalities by the prescribing, adapting and application of ophthalmic lenses, devices containing lenses, prisms, contact lenses, orthoptics, vision therapy, pharmaceutical agents and prosthetic devices and other optical aids, and by using other corrective procedures to preserve, restore or improve vision, excluding invasive surgery and tissue-altering lasers; [1995, c. 439, §2 (AMD).]

D. The fitting, bending and adjusting of eyeglasses with ophthalmic lenses, except that activities covered by this subsection are not considered the practice of optometry if the fitting, bending and adjusting are by order of and under the responsibility of an optometrist or ophthalmologist; and [1993, c. 600, Pt. A, §142 (AMD).]

E. The replacement or duplication of an ophthalmic lens without a written prescription from an individual licensed under the laws of this State to practice either optometry or medicine.

Nothing in this subsection may be construed to prevent an optical mechanic from doing the merely mechanical work associated with adapting, fitting, bending, adjusting, replacing or duplicating of eyeglasses with ophthalmic lenses.

An ophthalmic lens is a spectacle lens or contact lens that has a spherical, cylindrical or prismatic power or value or a lens ground pursuant to a written prescription. [1993, c. 600, Pt. A, §142 (AMD).]

[2009, c. 195, §1 (AMD) .]

2. **Optometrist.** "Optometrist" means an individual who has obtained a license to practice optometry in the State.

[1993, c. 600, Pt. A, §143 (AMD) .]

3. **Pharmaceutical agent.** "Pharmaceutical agent" means any diagnostic and therapeutic substances for use in the diagnosis, cure, treatment, management or prevention of ocular conditions and diseases, but does not include drugs administered exclusively by injection, except injections for the emergency treatment of anaphylactic shock.

[2009, c. 195, §2 (AMD) .]

4. **Diagnostic pharmaceuticals.** "Diagnostic pharmaceuticals" means those pharmaceutical agents required to detect and diagnose an abnormal condition or eye disease.

[1987, c. 439, §5 (NEW); 1987, c. 542, Pt. K, §§5, 20 (NEW) .]

5. **Therapeutic pharmaceuticals.** "Therapeutic pharmaceuticals" means those pharmaceutical agents required to prevent, manage or treat abnormal ocular conditions or diseases.

Nothing in this section may be construed to permit the optometric use of pharmaceutical agents that are:

A. Controlled substances identified in schedules I and II as described in the United States Code, Title 21, Section 812; [1995, c. 439, §4 (AMD).]

B. Any pharmaceutical agent administered exclusively by subdermal injection, intramuscular injection, intravenous injection, subcutaneous injection or retrobulbar injections, except injections for the emergency treatment of anaphylactic shock; and [2009, c. 195, §3 (AMD).]

C. Any pharmaceutical agent for the specific treatment of a systemic disease, unless the agent is used specifically for an ocular disease. [1995, c. 439, §4 (AMD).]

Notwithstanding any other provision of this Act, an optometrist may dispense, prescribe and administer nonlegend agents.

[2009, c. 195, §3 (AMD) .]

SECTION HISTORY
1973, c. 788, §156 (NEW). 1975, c. 293, §4 (AMD). 1975, c. 563, §1 (RPR). 1985, c. 748, §42 (AMD). 1987, c. 542, §§K2-K5,K20 (AMD). 1993, c. 600, §§A142,143 (AMD). 1995, c. 439, §§1-4 (AMD). 1995, c. 439, §8 (AFF). 1995, c. 606, §1 (AMD). 2009, c. 195, §§1-3 (AMD).

§2413. STANDARD OF CARE

An optometrist authorized to use pharmaceutical agents for use in the diagnosis, cure, treatment or prevention of ocular disease shall be held to the same standard of care in diagnosis, use of such agents and treatment as that degree of skill and proficiency commonly exercised by a medical practitioner in the same community. [1987, c. 439, §6 (NEW); 1987, c. 542, Pt. K, §§ 6 and 20 (NEW).]

SECTION HISTORY
1987, c. 542, §§K6,K20 (NEW).

Subchapter 2: BOARD OF OPTOMETRY

§2415. APPOINTMENT; TENURE; VACANCIES; REMOVAL

The State Board of Optometry, as established by Title 5, section 12004-A, subsection 28 and in this chapter called the "board," consists of 6 persons appointed by the Governor. Five of the appointees must have been resident optometrists engaged in the actual practice of optometry in this State for a period of at least 5 years prior to their appointment and after the 1999 renewal they must hold advanced therapeutic licenses. One of the appointees must be a consumer member who is a resident of this State and has no pecuniary interest in optometry or in the merchandising of optical products. Appointment is for a term of 5 years. Appointments of members must comply with Title 10, section 8009. A member of the board may be removed from office for cause by the Governor. The board has a common seal. [2007, c. 695, Pt. B, §10 (AMD).]

SECTION HISTORY
1973, c. 788, §156 (NEW). 1975, c. 771, §354 (AMD). 1983, c. 812, §220 (AMD). 1989, c. 503, §B136 (AMD). 1993, c. 600, §A144 (AMD). 1995, c. 606, §2 (AMD). 2007, c. 695, Pt. B, §10 (AMD).

§2416. OFFICERS; COMPENSATION; MEETINGS

The board shall annually elect from its members a president and a secretary-treasurer. They each have authority, during their term of office, to administer oaths and take affidavits as required by this chapter. The secretary-treasurer shall receive all fees, charges and assessments payable to the board and account for and pay over the same according to law. The board shall meet at least once in each year within the Capital area, and, in addition, whenever and wherever necessary to conduct the business of the board. A majority of the board constitutes a quorum. [1993, c. 600, Pt. A, §145 (AMD).]

The members of the board are each entitled to compensation according to the provisions of Title 5, chapter 379. In a year in which the income of the board is not sufficient to pay members of the board, available funds must be prorated. [1993, c. 600, Pt. A, §145 (AMD).]

The secretary-treasurer is responsible to keep a full record of the proceedings of the board, which must be open to public inspection at all reasonable times. [1993, c. 600, Pt. A, §145 (AMD).]

The board may employ clerical personnel, define their duties and fix their compensation, subject to the Civil Service Law. [1999, c. 607, §1 (NEW).]

SECTION HISTORY
1973, c. 788, §156 (NEW). 1983, c. 812, §221 (AMD). 1993, c. 600, §A145 (AMD). 1999, c. 607, §1 (AMD).

§2417. STANDARDS; RULES OF BOARD

1. **Standards for licensure.** The following are the requirements applicants must meet before licensure:

A. Be at least 18 years of age; [1973, c. 788, §156 (NEW).]

B. [1983, c. 378, §24 (RP).]

C. Be a graduate of a recognized school of optometry; and [1993, c. 600, Pt. A, §146 (AMD).]

D. Have succeeded in an examination as described in section 2422. [1973, c. 788, §156 (NEW).]

Upon satisfying these requirements, an applicant may be licensed by the board.

[1993, c. 600, Pt. A, §146 (AMD) .]

2. **Standards for renewal.**

[1983, c. 378, §25 (RP) .]

3. **Standards for minimum eye examination.** The following are the minimum standards for a competent professional eye examination:

A. A history of the patient's visual problems and care; [1993, c. 600, Pt. A, §146 (AMD).]

B. A test of the acuity of each eye, uncorrected and with best correction; [1993, c. 600, Pt. A, §146 (AMD).]

C. An examination for an abnormal condition or any significant characteristics of internal and external ocular tissues; [1993, c. 600, Pt. A, §146 (AMD).]

D. Advice for medical treatment or referral, or both; [1987, c. 439, §7 (RPR); 1987, c. 542, Pt. K, §§7, 20 (RPR).]

E. Objective and subjective refraction of the eyes; and [1993, c. 600, Pt. A, §146 (AMD).]

F. A cover test or muscle balance tests, or both. [1993, c. 600, Pt. A, §146 (AMD).]

Each optometrist shall maintain a complete record of all eye examinations given. Each optometrist shall include in the examination record the findings under paragraphs A through F, as well as any prescriptions or programs of corrective procedure. This information for each patient must be available from the optometrist for a period of not less than 10 years.

[1993, c. 600, Pt. A, §146 (AMD) .]

4. **Minimum prescription requirements.** The following are the minimum requirements for optometric prescriptions.

A. [1993, c. 600, Pt. A, §146 (RP).]

A-1. For ophthalmic lenses and contact lenses:

(1) The prescription must contain all the information necessary to be properly dispensed;

(2) The prescription must specify whether it is for contact lenses or ophthalmic lenses; and

(3) All prescriptions must include the name of the patient, date of prescription, name and office location of prescriber and an expiration date. [1993, c. 600, Pt. A, §146 (NEW).]

B. [1993, c. 600, Pt. A, §146 (RP).]

C. All prescriptions must be reduced to writing and placed on file as provided in subsection 3. [1993, c. 600, Pt. A, §146 (AMD).]

D. For pharmaceutical agents all prescriptions must include:

(1) The patient's name;

(2) The date;

(3) The name, quantity and dosage of drugs;

(4) The number of refills;

(5) The name of the prescriber;

(6) The drug license number of the prescriber;

(7) A sequential number; and

(8) The prescriber's directions for usage.

Nothing in this paragraph may be construed to restrict the dispensation or sale by an optometrist of contact lenses that contain and deliver pharmaceutical agents authorized under this chapter for use or prescription. [2009, c. 195, §4 (AMD).]

[2009, c. 195, §4 (AMD) .]

4-A. **Release of contact lens prescription.** After contact lenses have been adequately fitted and the patient released from immediate follow-up care by the optometrist, the patient may request a copy of the contact lens specifications from the optometrist. Upon patient request, the optometrist shall provide a copy of the prescription, at no cost, which must contain the information necessary to properly duplicate the current prescription. The contact lens prescription must contain an expiration date not to exceed 24 months from the date of issue. The prescription may contain fitting guidelines and may also contain specific instructions for use by the patient.

The prescribing optometrist is not liable for an injury or condition to a patient that results from negligence in packaging, manufacturing or dispensing lenses by anyone other than the prescribing optometrist.

The dispensing party may dispense contact lenses only upon receipt of a written prescription, except that an optometrist may fill a prescription of another optometrist or a physician without a copy of the prescription. Mail order contact lens suppliers must be licensed by and register with the Board of Commissioners of the

Profession of Pharmacy pursuant to section 13751, subsection 3-A and are subject to discipline by that board for violations of that board's rules and the laws governing the board. An individual who fills a contact lens prescription shall maintain a file of that prescription for a period of 5 years. An individual, corporation or other entity, other than a mail order contact lens supplier, that improperly fills a contact lens prescription or fills an expired prescription commits a civil violation for which a forfeiture of not less than $250 nor more than $1,000 may be adjudged.

An individual may file a complaint with the board seeking disciplinary action concerning violations of this subsection. The board shall investigate or cause to be investigated and shall resolve a complaint in a timely fashion on its own motion or upon receipt of a written complaint. The board shall conduct its actions in accordance with the Maine Administrative Procedure Act.

[1997, c. 117, §1 (AMD) .]

5. **Rules.** The board shall, in accordance with the Maine Administrative Procedure Act, Title 5, sections 8051 to 8059, make reasonable rules, not inconsistent with law, to govern the following:

A. The time, place and manner of conducting state board examinations in optometry and the manner and form in which applications for examination must be filed; [1993, c. 600, Pt. A, §146 (AMD).]

B. The fees for registration and licensing under subchapter III; and [1993, c. 600, Pt. A, §146 (AMD).]

C. The conduct of the lawful practice of optometry in accordance with the standards established by this chapter. [2009, c. 195, §5 (AMD).]

The board may make other reasonable rules, in accordance with Title 5, sections 8051 to 8059, as necessary for the proper performance of its duties, including rules relating to false, deceptive and misleading advertising. Rules adopted relating to such advertising may not be inconsistent with any rules adopted pursuant to Title 5, section 207, subsection 2.

[2009, c. 195, §5 (AMD) .]

6. **Determination of the scope of the practice of optometry.**

[1995, c. 606, §11 (AFF); 1995, c. 606, §3 (RP) .]

SECTION HISTORY
1973, c. 788, §156 (NEW). 1977, c. 458, §4B (AMD). 1977, c. 694, §§594,595 (AMD). 1983, c. 378, §§24,25 (AMD). 1987, c. 542, §§K7,K8,K20 (AMD). 1991, c. 675, §1 (AMD). 1993, c. 600, §A146 (AMD). 1995, c. 439, §5 (AMD). 1995, c. 439, §8 (AFF). 1995, c. 606, §3 (AMD). 1995, c. 606, §11 (AFF). 1997, c. 117, §1 (AMD). 2009, c. 195, §§4, 5 (AMD).

§2418. REPORTS; LIAISON; LIMITATIONS

On or before August 1st of each year, the board shall submit to the Commissioner of Professional and Financial Regulation, for the preceding fiscal year ending June 30th, its annual report of its operations and financial position, together with comments and recommendations the board considers essential. [1993, c. 600, Pt. A, §147 (AMD).]

The commissioner shall act as a liaison between the board and the Governor. [1977, c. 604, §22 (RPR).]

The commissioner may not exercise or interfere with the exercise of discretionary, regulatory or licensing authority granted by statute to the board. The commissioner may require the board to be accessible to the public for complaints and questions during regular business hours and to provide any information the commissioner requires in order to ensure that the board is operating administratively within the requirements of this chapter. [1995, c. 462, Pt. A, §58 (RPR).]

SECTION HISTORY
1973, c. 788, §156 (NEW). 1977, c. 604, §22 (RPR). 1985, c. 748, §42 (AMD). 1993, c. 600, §A147 (AMD). 1993, c. 659, §B10 (AMD). 1995, c. 462, §A58 (AMD).

§2418-A. BUDGET

The board shall submit to the Commissioner of Professional and Financial Regulation its budgetary requirements as provided in Title 5, section 1665, and the commissioner shall in turn transmit these requirements to the Bureau of the Budget without any revision or other change, unless alterations are mutually agreed upon by the department and the board or the board's designee. The budget submitted by the board to the commissioner must be sufficient to enable the board to comply with this subchapter. [1995, c. 462, Pt. A, §59 (RPR).]

SECTION HISTORY
1977, c. 604, §23 (NEW). 1985, c. 748, §42 (AMD). 1993, c. 600, §A148 (AMD). 1993, c. 659, §B11 (AMD). 1995, c. 462, §A59 (RPR).

§2418-B. CONSUMER INFORMATION

(REPEALED)

SECTION HISTORY
1991, c. 675, §2 (NEW). 1993, c. 600, §A149 (RP).

§2419. USE OF DRUGS

(REPEALED)

SECTION HISTORY
1975, c. 563, §2 (NEW). 1983, c. 378, §26 (AMD). 1987, c. 542, §§K9,K20 (RP).

§2419-A. LICENSURE FOR USE OF THERAPEUTIC PHARMACEUTICAL AGENTS

(REPEALED)

SECTION HISTORY
1987, c. 542, §§K10,K20 (NEW). 1993, c. 600, §A150 (AMD). 1995, c. 606, §4 (RP).

§2420. NOTIFICATION TO MAINE BOARD OF PHARMACY

Every year at the completion of the license renewal cycle, the board shall provide to the Maine Board of Pharmacy a current listing of all licensees designating licensees who may prescribe pharmaceuticals pursuant to therapeutic or advanced therapeutic licensure and the pharmaceuticals those licensees may prescribe. [1997, c. 117, §2 (AMD); 1997, c. 245, §19 (AMD).]

SECTION HISTORY

1995, c. 606, §5 (NEW). 1997, c. 117, §2 (AMD). 1997, c. 245, §19 (AMD).

Subchapter 3: LICENSURE HEADING: PL 1993, C. 600, PT. A, §151 (RPR)

§2421. LICENSURE REQUIRED

1. **Licensure required.** An individual may not practice optometry in this State without first obtaining a license from the board, but this chapter does not apply to individuals already licensed to practice medicine within this State.

[1993, c. 600, Pt. A, §152 (NEW) .]

2. **Penalty.** An individual who practices optometry in violation of subsection 1 commits a Class E crime. The State may bring action in Superior Court to enjoin an individual from violating subsection 1 regardless of whether proceedings have been or may be instituted in District Court and regardless of the status of criminal proceedings.

[1993, c. 600, Pt. A, §152 (NEW); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

SECTION HISTORY
1973, c. 788, §156 (NEW). 1993, c. 600, §A152 (RPR). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF).

§2422. EXAMINATION; FEES; INITIAL LICENSURE

Every individual before beginning the practice of optometry in this State must pass an examination before the board. The board shall provide an opportunity for applicants to take the examination at least twice per year. At the discretion of the board, the examination may consist of tests in basic sciences; in anatomy and physiology of the eye; pathology; practical, theoretical and physiological optics; practical and theoretical optometry; clinical diagnosis and therapeutics; and other phases of optometric knowledge and skill the board determines to be essential. The board shall require that a new applicant pass Parts I, II and III of the National Board of Examiners in Optometry examination, including all sections of the Treatment and Management of Ocular Diseases (TMOD) examination. An individual who has applied to be examined shall appear before the board at the time and place the board designates and, before the examination, shall pay to the board a sum not in excess of $400 as established by the board. All applicants successfully passing the examination must be licensed to practice optometry. The board may require applicants who have failed to pass the licensure examination 3 times to enroll in a course of continuing education as prescribed by the board. [2003, c. 252, §1 (AMD).]

1. **Requirement.** All applicants for a therapeutic or advanced therapeutic pharmaceutical license under this section shall submit proof of compliance with the application requirements set forth in section 2430, subsections 1 and 3.

A. [1995, c. 606, §6 (RP).]

B. [1995, c. 606, §6 (RP).]

C. [1995, c. 606, §6 (RP).]

[1995, c. 606, §6 (AMD) .]

SECTION HISTORY

1973, c. 788, §156 (NEW). 1975, c. 563, §3 (AMD). 1987, c. 542, §§K11,K20 (AMD). 1993, c. 600, §A153 (AMD). 1995, c. 606, §6 (AMD). 2003, c. 252, §1 (AMD).

§2423. LICENSING

1. **Annual renewal.** Every licensed optometrist practicing in the State shall pay annually, before the first day of April, to the board a license renewal fee not in excess of $400 as established by the board under section 2417.

[2003, c. 252, §2 (AMD) .]

2. **Nonactive license.** Every licensed optometrist not practicing within the State must upon payment of an annual license renewal fee not in excess of $400 as established by the board, be issued a nonactive license renewal. The fee is payable to the board before the first day of April each year. Should a holder of a nonactive license desire to practice within the State, the licensee shall notify the board in writing, and except as otherwise provided in this chapter, must then be issued an active license by the board.

[2003, c. 252, §3 (AMD) .]

3. **Examination.** Every optometrist holding a nonactive license for a period of 3 years or more who desires an active license shall submit to a practical examination for professional and technical proficiency conducted by the board. If the applicant demonstrates professional and technical proficiency in the examinations, the applicant may be issued an active license authorizing practice in this State. The active license is renewed annually as provided in subsection 1.

[1993, c. 600, Pt. A, §154 (AMD) .]

4. **Default.** In case of default in payment of any license renewal fees by a licensed optometrist, the license expires. A license may be renewed up to 60 days after the date of expiration upon payment of a late fee, established by the board in an amount not to exceed the annual renewal fee, in addition to the renewal fee.

[1993, c. 600, Pt. A, §154 (AMD) .]

5. **Military service; license to practice optometry.** A resident of the State who is serving in the military service of the United States and is engaged in the practice of optometry as defined in section 2411 is entitled to the issuance of an active license upon payment of the required annual renewal fee.

[1993, c. 600, Pt. A, §154 (AMD) .]

SECTION HISTORY
1973, c. 788, §156 (NEW). 1977, c. 187, (AMD). 1977, c. 694, §596 (AMD). 1983, c. 378, §27 (AMD). 1993, c. 600, §A154 (AMD). 1995, c. 606, §7 (AMD). 1997, c. 117, §3 (AMD). 2003, c. 252, §§2,3 (AMD).

§2424. RECIPROCITY

(REPEALED)

SECTION HISTORY
1973, c. 788, §156 (NEW). 1977, c. 694, §597 (AMD). 1993, c. 600, §A155 (RP).

§2425. DISPLAY OF LICENSE

Every individual to whom a license is granted shall display the license in a conspicuous part of the office where the licensee practices. An optometrist awarded credentials by the board in the use of diagnostic, therapeutic or advanced therapeutic pharmaceuticals shall affix current documentation of these privileges to that optometrist's license as provided by the board upon annual renewal. [1997, c. 117, §4 (AMD).]

SECTION HISTORY
1973, c. 788, §156 (NEW). 1987, c. 542, §§K12,K20 (AMD). 1993, c. 600, §A156 (AMD). 1997, c. 117, §4 (AMD).

§2426. EDUCATIONAL PROGRAMS

All optometrists licensed in the State of Maine are required to take annual courses in subjects related to the practice of the profession of optometry, to the end that the utilization and application of new techniques, scientific and technical advances, the use of pharmaceutical agents and treatment of ocular diseases and the achievements of research will assure comprehensive vision care to the public. The length of study is determined by the board, but in no event may the length be less than 15 hours nor exceed 30 hours in any calendar year. Optometrists authorized to use therapeutic pharmaceutical agents shall complete at least 25 hours of Category 1 continuing education, approved by the American Optometric Association, the American Medical Association, the American Academy of Ophthalmologists or the American Council on Pharmaceutical Education, of which 15 hours must be in diagnosis and treatment of ocular disease. Attendance must be at a course or courses approved by the board and certified to the board upon a form provided by the board and submitted by each optometrist at the time of application to the board for license renewal accompanied by the annual renewal fee. The board shall notify all optometrists licensed in this State of all courses approved by it at least 15 days prior to the offering of each course. [1995, c. 606, §8 (AMD).]

The board may waive this continuing education requirement in cases of illness or undue hardship. If an applicant for license renewal fails to comply with this continuing education provision and action has not been taken by the board to waive the requirements because of the causes specified, then the board may not renew the license, except that in its discretion, it may renew the license conditionally with the provision that within 6 months the applicant shall fulfill the requirements. [1995, c. 606, §8 (AMD).]

SECTION HISTORY
1973, c. 788, §156 (NEW). 1987, c. 542, §§K13,K20 (AMD). 1993, c. 600, §A157 (AMD). 1995, c. 606, §8 (AMD).

§2427. DIAGNOSTIC DRUG LICENSE

(REPEALED)

SECTION HISTORY
1975, c. 563, §4 (NEW). 1983, c. 378, §28 (AMD). 1987, c. 542, §§K14,K20 (RP).

§2428. THERAPEUTIC PHARMACEUTICAL MONITORING PANEL

(REPEALED)

SECTION HISTORY
1987, c. 542, §§K15,K20 (NEW). 1987, c. 586, (AMD). 1989, c. 45, (AMD). MRSA T. 32, §2428, sub-§8 (RP).

§2429. CONSUMER INFORMATION

(REPEALED)

SECTION HISTORY
1991, c. 675, §3 (NEW). 1993, c. 600, §A158 (RPR). 1995, c. 370, §2 (RP).

§2430. USE OF THERAPEUTIC PHARMACEUTICAL AGENTS

An optometrist may not use pharmaceutical agents, except diagnostic agents, unless licensed in accordance with this section. [1995, c. 606, §9 (NEW).]

1. **Therapeutic license.** An optometrist may use topical therapeutic agents for any purpose associated with ocular conditions and diseases, except for the treatment of glaucoma, if the optometrist has received a therapeutic license in accordance with the following requirements.

A. Licensure requires a review of credentials by the board including the successful completion of a transcript quality course in general and ocular pharmacology. For the purposes of this section, "transcript quality course" means a course given by a regional or professional accrediting organization approved by the Council on Post-secondary Accreditation of the United States Department of Education and approved by the board. The board may not approve a course that does not include a minimum of 100 hours of ocular therapeutics including at least 25 hours of supervised clinical training in the examination, diagnosis and treatment of conditions of the eye and its adnexa. That course must include participation by an ophthalmologist. [1995, c. 606, §9 (NEW).]

B. An applicant must be a graduate from an accredited optometric institution and successfully complete a graded written examination administered by the board or the National Board of Examiners in Optometry, demonstrating competency in the use of therapeutic pharmaceutical agents. [1995, c. 606, §9 (NEW).]

Effective October 1, 1996, the board may not issue new therapeutic licenses.

[1995, c. 606, §9 (NEW) .]

2. **Therapeutic pharmaceutical agents; use permitted.** An optometrist who has received an advanced therapeutic license may use and prescribe any therapeutic pharmaceutical agent, except for the treatment of glaucoma unless the requirements of section 2430-B have been met, including any drug identified in schedules III, IV and V as described in 21 United States Code, Section 812, for any purpose associated with ocular conditions and diseases except for oral chemotherapeutic agents, oral immunosuppressive agents and oral immunostimulant agents, and except that an optometrist who has received an advanced therapeutic license may prescribe one 5-day supply of any analgesic identified in schedules III, IV and V as described in 21 United States Code, Section 812.

A. [2009, c. 195, §6 (RP).]

B. [2009, c. 195, §6 (RP).]

C. [2009, c. 195, §6 (RP).]

D. [2009, c. 195, §6 (RP).]

E. [2009, c. 195, §6 (RP).]

[2009, c. 195, §6 (AMD) .]

3. **Requirements for advanced therapeutic license.** Requirements for an advanced therapeutic license are as follows.

A. Optometrists without a therapeutic license must complete the following:

(1) Licensure requires a review of credentials by the board including the successful completion of a transcript quality course in general and ocular pharmacology. For the purposes of this section, "transcript quality course" means a course given by a regional or professional accrediting organization approved by the Council on Post-secondary Accreditation of the United States Department of Education and approved by the board. The board may not approve a course that does not include a minimum of 100 hours of ocular therapeutics including at least 25 hours of supervised clinical training in the examination, diagnosis and treatment of conditions of the eye and its adnexa. That course must include participation by an ophthalmologist;

(2) An applicant must be a graduate from an accredited optometric institution and successfully complete a graded written examination administered by the board or the National Board of Examiners in Optometry, demonstrating competency in the use of therapeutic pharmaceutical agents; and

(3) Successful completion of a course of at least 25 hours devoted primarily to pharmacology and glaucoma, referred to in this section as the "Lancaster Course," or its board-approved equivalent, and 3 additional hours of a board-approved course in pharmacology dealing solely with antiglaucoma agents. The requirements of this subparagraph may be completed anytime after the 2nd year of optometric study. [1995, c. 606, §9 (NEW).]

B. Optometrists with a therapeutic license must meet the following requirements:

(1) Successful completion of the "Lancaster Course" or a board-approved equivalent course of at least 25 hours devoted primarily to the study of pharmacology and glaucoma. The requirements of this subparagraph may be completed any time after the 2nd year of optometric study;

(2) Successful completion of 3 didactic hours of a board-approved course in pharmacology dealing solely with antiglaucoma agents; and

(3) Successful passage of the Treatment and Management of Ocular Diseases (TMOD) component of the National Board of Examiners in Optometry examination on or after July 1, 1991. [1995, c. 606, §9 (NEW).]

[1995, c. 606, §9 (NEW) .]

SECTION HISTORY
1995, c. 606, §9 (NEW). 2009, c. 195, §6 (AMD).

§2430-A. TREATMENT OF GLAUCOMA

(REPEALED)

SECTION HISTORY
1995, c. 606, §9 (NEW). 2009, c. 195, §7 (RP).

§2430-B. TREATMENT OF GLAUCOMA

1. **Optometrists qualified.** An optometrist who graduated from optometric college in the year 1996 or thereafter and who is an advanced therapeutic licensee is authorized to independently treat glaucoma.

[2009, c. 195, §8 (NEW) .]

2. **Consultation required.** In order to be authorized to independently treat glaucoma, an advanced therapeutic licensee who graduated from optometric college prior to 1996 must provide evidence to the board of no more than 30 glaucoma-related consultations with a physician in accordance with this section. For purposes of this section, "physician" means a licensed physician specializing in diseases of the eye. The board

shall form a glaucoma consultation subcommittee comprised of 2 optometrists appointed by the board and 2 physicians appointed by the Board of Licensure in Medicine to review evidence of consultations submitted pursuant to this section in accordance with the following criteria.

A. The glaucoma-related consultations must be conducted as follows:

(1) A new or existing glaucoma or glaucoma-suspect patient is examined and diagnosed by the optometrist;

(2) The optometrist develops a proposed treatment plan and forwards the plan with examination documentation to a physician for consultation;

(3) The physician examines the patient and reviews the optometrist's examination documentation and proposed treatment plan; and

(4) The physician, optometrist and patient mutually agree to and document a treatment plan. [2009, c. 195, §8 (NEW).]

B. An advanced therapeutic licensee may petition the glaucoma consultation subcommittee to reduce or waive the number of consultations required. A reduction or waiver may be granted by a majority vote of the subcommittee. If the subcommittee is evenly divided on the question of a specific waiver or reduction, then the request for waiver or reduction must be referred to the board. The board shall hold a hearing on the request for waiver or reduction and shall render a decision. The subcommittee or the board, in evaluating a request for a waiver or reduction in the number of cases, shall consider, among other things:

(1) Optometric college education and course work;

(2) Any residency or practical experience;

(3) Certifications in other states;

(4) Any partial completion of the consultation regimen under paragraph A;

(5) Ongoing education; and

(6) Any other factors considered relevant by the subcommittee or board. [2009, c. 195, §8 (NEW).]

C. An optometrist who has been licensed and practiced under the laws of another state and has been authorized to independently treat glaucoma in that state may petition the glaucoma consultation subcommittee for a waiver of the consultation requirement. If the optometrist graduated from optometric college in 1996 or thereafter, the waiver must be granted. The subcommittee shall evaluate the education, licensure and experience of an optometrist who graduated prior to 1996 and, if they are equivalent to that of an advanced therapeutic licensee in this State authorized under this section to treat glaucoma independently, shall waive the consultation requirements of this section. [2009, c. 195, §8 (NEW).]

[2009, c. 195, §8 (NEW) .]

SECTION HISTORY
2009, c. 195, §8 (NEW).

Subchapter 4: REVOCATION, REFUSAL OR SUSPENSION OF LICENSE HEADING: PL 1993, C. 600, PT. A, §159 (RPR)

§2431. REVOCATION, REFUSAL OR SUSPENSION OF CERTIFICATE

(REPEALED)

SECTION HISTORY

1973, c. 788, §156 (NEW). 1977, c. 694, §598 (RPR). 1983, c. 378, §29 (RP).

§2431-A. DISCIPLINARY ACTIONS

1. **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.

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 the complaint 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, 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 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 determines appropriate:

A. 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; [1993, c. 600, Pt. A, §160 (AMD).]

B. 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 that 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; [1993, c. 600, Pt. A, §160 (AMD).]

C. If the board concludes that modification or nonrenewal of the license is in order, the board shall hold an adjudicatory hearing in accordance with the provisions of the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV; or [1993, c. 600, Pt. A, §160 (AMD).]

D. If the board concludes that suspension or revocation of the license is in order, the board shall file a complaint in the District Court in accordance with Title 4, chapter 5. [1999, c. 547, Pt. B, §63 (AMD); 1999, c. 547, Pt. B, §80 (AFF).]

[1999, c. 547, Pt. B, §63 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

2. **Grounds for discipline.** The board may suspend or revoke a license pursuant to Title 5, section 10004. The following are grounds for an action to refuse to issue, modify, suspend, revoke or refuse to renew the license of an optometrist licensed under this chapter:

A. The practice of fraud or deceit in obtaining a license under this chapter or in connection with service rendered within the scope of the license issued; [1983, c. 378, §30 (NEW).]

B. Habitual substance abuse that has resulted or is foreseeably likely to result in the licensee performing services in a manner that endangers the health or safety of patients; [1993, c. 600, Pt. A, §160 (AMD).]

C. A professional diagnosis of a mental or physical condition that has resulted or is foreseeably likely to result in the licensee performing services in a manner that endangers the health or safety of the patients; [1993, c. 600, Pt. A, §160 (AMD).]

D. Aiding or abetting the practice of optometry by an individual not licensed under this chapter who claims to be legally licensed; [1993, c. 600, Pt. A, §160 (AMD).]

E. Incompetence in the practice for which the optometrist is licensed. A licensee is considered incompetent in the practice if the licensee has:

(1) Engaged in conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client or patient or the general public; or

(2) Engaged in conduct that evidences a lack of knowledge or inability to apply principles or skills to carry out the practice for which the optometrist is licensed; [1993, c. 600, Pt. A, §160 (AMD).]

F. Unprofessional conduct. A licensee is considered to have engaged in unprofessional conduct if the licensee violates a commonly understood standard of professional behavior or board rule governing professional conduct; [1993, c. 600, Pt. A, §160 (AMD).]

G. Subject to the limitations of Title 5, chapter 341, conviction of a crime that involves dishonesty or false statement or that relates directly to the practice for which the licensee is licensed, or conviction of a crime for which incarceration for one year or more may be imposed; [1993, c. 600, Pt. A, §160 (AMD).]

H. A violation of this chapter or a rule adopted by the board; [1993, c. 600, Pt. A, §160 (AMD).]

I. Engaging in false, misleading or deceptive advertising; [1983, c. 378, §30 (NEW).]

J. Practicing in or on premises where materials other than those necessary to render optometric services are dispensed to the public; [1993, c. 600, Pt. A, §160 (AMD).]

K. Practicing under a name other than that given in the license. Licensees practicing in association with other licensed optometrists or physicians, as authorized by section 2434 may practice under a name adopted to denote this association if the names of all optometrists and physicians so associated are stated as they appear on each individual's license whenever the association name is used; [1993, c. 600, Pt. A, §160 (AMD).]

L. Representing one's self to the public as something other than an optometrist, for example, as an optician, eye physician or by use of another designation that would tend to confuse the nature of one's licensed practice. The following titles are considered lawful:

(1) John Doe, O.D., Optometrist;

(2) John Doe, O.D.;

(3) John Doe, Optometrist;

(4) Dr. John Doe, Optometrist; and

(5) Doctor John Doe, Optometrist; [1993, c. 600, Pt. A, §160 (AMD).]

M. [1993, c. 600, Pt. A, §160 (RP).]

N. Maintaining more than three offices for the practice of optometry without the prior written approval of the board; [1993, c. 600, Pt. A, §160 (AMD).]

O. Failure to display a diagnostic or therapeutic drug license issued under section 2419-A or 2425; or [1987, c. 439, §16 (AMD); 1987, c. 542, Pt. K, §§16, 20 (AMD).]

P. Splitting or dividing a fee with an individual not an associate in conformance with section 2434, or giving or accepting a rebate from an optician or ophthalmic dispenser. [1993, c. 600, Pt. A, §160 (AMD).]

[1993, c. 600, Pt. A, §160 (AMD) .]

SECTION HISTORY

1983, c. 378, §30 (NEW). 1987, c. 542, §§K16,K20 (AMD). 1993, c. 600, §A160 (AMD). 1999, c. 547, §B63 (AMD). 1999, c. 547, §B80 (AFF).

§2432. GENERAL GROUNDS

(REPEALED)

SECTION HISTORY
1973, c. 788, §156 (NEW). 1975, c. 563, §5 (AMD). 1983, c. 176, §A15 (AMD). 1983, c. 378, §31 (RP). 1987, c. 402, §A170 (AMD).

§2433. UNPROFESSIONAL CONDUCT

(REPEALED)

SECTION HISTORY
1973, c. 788, §156 (NEW). 1977, c. 458, §§5,5A (AMD). 1983, c. 378, §32 (RP).

§2434. UNAUTHORIZED ASSOCIATIONS

An optometrist may practice only in an individual capacity under the optometrist's own name or in association with a licensed practitioner of optometry or of another of the healing arts and sciences. The following are unauthorized associations subject to the sanctions of section 2431-A: [1993, c. 600, Pt. A, §161 (AMD).]

1. **Associations.** Association for the joint practice of optometry with an individual, corporation or partnership not licensed to practice optometry or another of the healing arts;

[1993, c. 600, Pt. A, §161 (AMD) .]

2. **Aiding unauthorized practice.** Assisting an unlicensed individual, corporation or partnership in the practice of optometry;

[1993, c. 600, Pt. A, §161 (AMD) .]

3. **Loan of license.** The lending, leasing or in any other manner placing of one's license at the disposal of or in the service of an individual not licensed to practice optometry in this State;

[1993, c. 600, Pt. A, §161 (AMD) .]

4. **Mercantile employment.** The practice of optometry as a full or part-time employee of a mercantile establishment or directly or indirectly encouraging one's optometric services to be promoted as part of a mercantile or commercial establishment. In this prohibition is included the practice of optometry as a lessee of a commercial or mercantile establishment involved in the selling of spectacles, frames, mounting, lenses or other optical devices; and

[1993, c. 600, Pt. A, §161 (AMD) .]

5. **Continuing unauthorized associations.** The continuance of an optometrist directly or indirectly in the employ of or in association with an optometrist after knowledge that the optometrist is engaged in the violation of the provisions of this chapter.

[1993, c. 600, Pt. A, §161 (AMD) .]

SECTION HISTORY

1973, c. 788, §156 (NEW). 1983, c. 378, §33 (AMD). 1993, c. 600, §A161 (AMD).

§2435. CORPORATE PRACTICE OF OPTOMETRY

A licensed optometrist, under this chapter, may not associate with an individual who is not a licensed optometrist nor a copartnership, firm or corporation for the promotion of a commercial practice for profit or division of profit that enables the individual, copartnership, firm or corporation to engage, either directly or indirectly, in the practice of optometry in this State. [1993, c. 600, Pt. A, §162 (AMD).]

SECTION HISTORY
1973, c. 788, §156 (NEW). 1983, c. 378, §34 (AMD). 1993, c. 600, §A162 (AMD).

§2436. SUCCESSION IN PRACTICE

An optometrist taking over an established practice shall clearly indicate that the new optometrist is responsible individually for the practice, but the optometrist may use the term: "succeeded by," "successor to" or "succeeding" for a period not exceeding 2 years. [1993, c. 600, Pt. A, §163 (AMD).]

SECTION HISTORY
1973, c. 788, §156 (NEW). 1993, c. 600, §A163 (AMD).

Subchapter 5: UNAUTHORIZED PRACTICE

§2441. PENALTIES

(REPEALED)

SECTION HISTORY
1973, c. 788, §156 (NEW). 1987, c. 542, §§K17,K20 (AMD). 1993, c. 600, §A164 (RP).

§2442. FRAUDULENT ACTS

(REPEALED)

SECTION HISTORY
1973, c. 788, §156 (NEW). 1993, c. 600, §A165 (RP).

§2443. REFERRALS BY OPTICAL FIRMS PROHIBITED

(REPEALED)

SECTION HISTORY
1973, c. 788, §156 (NEW). 1993, c. 600, §A165 (RP).

§2444. PUBLIC AID OCULAR SERVICES

All agencies, commissions, clinics and bureaus administering relief, public assistance, public welfare assistance, social security, health insurance or health services under the laws of this State may accept the service of licensed optometrists for a service covered by their licenses relating to individuals receiving benefits from those agencies or commissions and must pay for the services in the same way as practitioners of

other professions are paid for similar services. Government agencies, or their agents, officials or employees, including the public schools, may not discriminate among licensed ocular practitioners. [1993, c. 600, Pt. A, §166 (AMD).]

SECTION HISTORY
1973, c. 788, §156 (NEW). 1993, c. 600, §A166 (AMD).

§2445. SOLICITATION

(REPEALED)

SECTION HISTORY
1973, c. 788, §156 (NEW). 1977, c. 458, §6 (RP).

§2446. DRUGS

An optometrist who uses pharmaceutical agents without first having obtained the appropriate license under this chapter commits a Class E crime. [1995, c. 606, §10 (AMD).]

SECTION HISTORY
1975, c. 563, §6 (NEW). 1977, c. 564, §121 (AMD). 1987, c. 542, §§K18,K20 (AMD). 1993, c. 600, §A167 (AMD). 1995, c. 606, §10 (AMD).

Chapter 35: OPTOMETRISTS [REPEALED]

Subchapter 1: GENERAL PROVISIONS

§2451.

(REPEALED)

SECTION HISTORY
1973, c. 474, §2 (RP).

§2452.

(REPEALED)

SECTION HISTORY
1973, c. 474, §2 (RP).

§2453.

(REPEALED)

SECTION HISTORY
1973, c. 474, §2 (RP).

§2454.

(REPEALED)

SECTION HISTORY
1973, c. 474, §2 (RP).

§2455.

(REPEALED)

SECTION HISTORY
1969, c. 256, (NEW). 1973, c. 474, §2 (RP).

Subchapter 2: BOARD OF REGISTRATION AND EXAMINATION

§2501.

(REPEALED)

SECTION HISTORY
1973, c. 474, §2 (RP).

§2502.

(REPEALED)

SECTION HISTORY
1967, c. 125, §1 (AMD). 1973, c. 474, §2 (RP).

§2503.

(REPEALED)

SECTION HISTORY
1973, c. 474, §2 (RP).

Subchapter 3: REGISTRATION

§2551.

(REPEALED)

SECTION HISTORY
1973, c. 474, §2 (RP).

§2552.

(REPEALED)

SECTION HISTORY
1973, c. 474, §2 (RP).

§2553.

(REPEALED)

SECTION HISTORY
1967, c. 125, §2 (AMD). 1973, c. 474, §2 (RP).

§2554.

(REPEALED)

SECTION HISTORY
1973, c. 474, §2 (RP).

§2555.

(REPEALED)

SECTION HISTORY
1973, c. 474, §2 (RP).

§2556.

(REPEALED)

SECTION HISTORY
1973, c. 474, §2 (RP).

§2557.

(REPEALED)

SECTION HISTORY
1971, c. 216, (NEW). 1973, c. 474, §2 (RP).

Chapter 35-A: OPTOMETRISTS

Subchapter 1: GENERAL PROVISIONS

§2561. DEFINITIONS

(REPEALED)

SECTION HISTORY
1973, c. 474, §1 (NEW). 1973, c. 788, §157 (RP).

Subchapter 2: BOARD OF OPTOMETRY

§2565. APPOINTMENT; TENURE; VACANCIES; REMOVAL

(REPEALED)

SECTION HISTORY
1973, c. 474, §1 (NEW). 1973, c. 788, §157 (RP).

§2566. OFFICERS; COMPENSATION; MEETINGS; RULES AND REGULATIONS

(REPEALED)

SECTION HISTORY
1973, c. 474, §1 (NEW). 1973, c. 788, §157 (RP).

§2567. STANDARDS; RULES AND REGULATIONS

(REPEALED)

SECTION HISTORY
1973, c. 474, §1 (NEW). 1973, c. 788, §157 (RP).

§2568. ANNUAL REPORT

(REPEALED)

SECTION HISTORY
1973, c. 474, §1 (NEW). 1973, c. 788, §157 (RP).

Subchapter 3: REGISTRATION

§2571. REGISTRATION REQUIRED

(REPEALED)

SECTION HISTORY
1973, c. 474, §1 (NEW). 1973, c. 788, §157 (RP).

§2572. EXAMINATION; FEES; REGISTRATION

(REPEALED)

SECTION HISTORY
1973, c. 474, §1 (NEW). 1973, c. 788, §1 (RP).

§2573. LICENSING

(REPEALED)

SECTION HISTORY
1973, c. 474, §1 (NEW). 1973, c. 788, §157 (RP).

§2574. RECIPROCITY

(REPEALED)

SECTION HISTORY
1973, c. 474, §1 (NEW). 1973, c. 788, §157 (RP).

§2575. DISPLAY OF CERTIFICATES

(REPEALED)

SECTION HISTORY
1973, c. 474, §1 (NEW). 1973, c. 788, §157 (RP).

§2576. EDUCATIONAL PROGRAMS

(REPEALED)

SECTION HISTORY
1973, c. 474, §1 (NEW). 1973, c. 788, §157 (RP).

Subchapter 4: REVOCATION, REFUSAL OR SUSPENSION OF CERTIFICATE

§2581. REVOCATION, REFUSAL OR SUSPENSION OF CERTIFICATE

(REPEALED)

SECTION HISTORY
1973, c. 474, §1 (NEW). 1973, c. 788, §157 (RP).

§2582. GENERAL GROUNDS

(REPEALED)

SECTION HISTORY
1973, c. 474, §1 (NEW). 1973, c. 788, §157 (RP).

§2583. UNPROFESSIONAL CONDUCT

(REPEALED)

SECTION HISTORY
1973, c. 474, §1 (NEW). 1973, c. 788, §157 (RP).

§2584. UNAUTHORIZED ASSOCIATIONS

(REPEALED)

SECTION HISTORY
1973, c. 474, §1 (NEW). 1973, c. 788, §157 (RP).

§2585. CORPORATE PRACTICE OF OPTOMETRY

(REPEALED)

SECTION HISTORY
1973, c. 474, §1 (NEW). 1973, c. 788, §157 (RP).

§2586. SUCCESSION IN PRACTICE

(REPEALED)

SECTION HISTORY
1973, c. 474, §1 (NEW). 1973, c. 788, §157 (RP).

Subchapter 5: UNAUTHORIZED PRACTICE

§2591. PENALTIES

(REPEALED)

SECTION HISTORY
1973, c. 474, §1 (NEW). 1973, c. 788, §157 (RP).

§2592. FRAUDULENT ACTS

(REPEALED)

SECTION HISTORY
1973, c. 474, §1 (NEW). 1973, c. 788, §157 (RP).

§2593. REFERRALS BY OPTICAL FIRMS PROHIBITED

(REPEALED)

SECTION HISTORY
1973, c. 474, §1 (NEW). 1973, c. 788, §157 (RP).

§2594. PUBLIC AID OCULAR SERVICES

(REPEALED)

SECTION HISTORY
1973, c. 474, §1 (NEW). 1973, c. 788, §157 (RP).

§2595. SOLICITATION

(REPEALED)

SECTION HISTORY
1973, c. 474, §1 (NEW). 1973, c. 788, §157 (RP).

Chapter 36: OSTEOPATHIC PHYSICIANS

Subchapter 1: BOARD OF OSTEOPATHIC LICENSURE

§2561. MEMBERSHIP; QUALIFICATIONS; TENURE; VACANCIES

The Board of Osteopathic Licensure, as established by Title 5, section 12004-A, subsection 29, and in this chapter called the "board," consists of 10 members appointed by the Governor. Members must be residents of this State. Six members must be graduates of a school or college of osteopathic medicine approved by the American Osteopathic Association and must be, at the time of appointment, actively engaged in the practice of the profession of osteopathic medicine in the State for a period of at least 5 years. One member must be a physician assistant licensed under this chapter who has been actively engaged in that member's profession in this State for at least 5 years preceding appointment to the board. Three members must be public members. Consumer groups may submit nominations to the Governor for the members to be appointed to represent the interest of consumers. A full term of appointment is for 5 years. Appointment of members must comply with section 60. A member of the board may be removed from office for cause by the Governor. [2013, c. 101, §1 (AMD).]

SECTION HISTORY
1973, c. 374, §1 (NEW). 1973, c. 788, §158 (AMD). 1975, c. 575, §32 (AMD). 1975, c. 771, §§355,356 (AMD). 1983, c. 812, §222 (AMD). 1989, c. 462, §4 (AMD). 1989, c. 503, §B137 (AMD). 1989, c. 878, §A94 (RPR). 1991, c. 150, §1 (AMD). 1993, c. 600, §A169 (AMD). 1997, c. 50, §1 (AMD). 2013, c. 101, §1 (AMD).

§2562. MEETINGS; ORGANIZATIONS; DUTIES; POWERS

The board shall meet in June of each year at a time and place the chair may designate. The board shall elect one of its members as chair annually and one of its members as secretary-treasurer, to hold office at the pleasure of the board. The secretary-treasurer shall ensure proper management of the board's finances. Special meetings may be called at the pleasure of the chair and in case of the death or inability of the chair, the secretary-treasurer may call special meetings. The board shall cause a seal of suitable inscription to be procured and affixed to papers that may require the seal, shall keep a correct record of its proceedings and has power to make rules, not inconsistent with this chapter, it considers necessary for the successful enforcement of its authority and the performance of its duties. As part of the biennial relicensure process, the board shall prepare and distribute to each licensed osteopathic physician practicing in the State a copy of its code of ethics and current rules relative to continuing medical education. The chair and the secretary-treasurer may administer oaths in matters connected with the duties of the board. The records of the board must include a report of all money received and disbursed by the board and a list of all applicants for licenses, including the name and location of the school or college of osteopathic medicine approved by the American Osteopathic Association that granted the degree to each applicant and whether the applicant was granted or denied a license. These records, or duplicates, must always be open to inspection in the office of the Secretary of State during regular office hours. Four members of the board constitute a quorum for the transaction of business. A license to practice osteopathic medicine may not be granted, except on an affirmative vote of a majority of the board. [1997, c. 50, §2 (AMD).]

Each member of the board is entitled to compensation according to the provisions of Title 5, chapter 379. All requisitions for payment of money must be signed by the chair and the secretary-treasurer of the board. If the fees to be collected under the provisions of this chapter are insufficient to pay the salaries and expenses provided by this section, the members of the board are entitled to only a pro rata payment for salary in years in which the fees are insufficient. [1993, c. 600, Pt. A, §170 (AMD).]

The board has the duty and the power to annually determine the salary of the secretary-treasurer, not to exceed $6,000. The board has the power to employ, fix the salary of and prescribe the duties of other personnel as the board considers necessary. The board shall utilize the consumer assistant position as provided in section 3269, subsection 15. The functions and expense of the consumer assistant position must be shared on a pro rata basis with the Board of Licensure in Medicine. [1997, c. 680, Pt. B, §1 (AMD).]

The board may set reasonable fees for services, such as providing license certifications and verifications, providing copies of laws and rules and providing copies of documents. [1993, c. 600, Pt. A, §170 (AMD).]

SECTION HISTORY
1973, c. 374, §1 (NEW). 1975, c. 575, §33 (AMD). 1983, c. 812, §223 (AMD). 1991, c. 425, §1 (AMD). 1993, c. 600, §A170 (AMD). 1997, c. 50, §2 (AMD). 1997, c. 680, §B1 (AMD).

§2562-A. ADEQUACY OF BUDGET

The budget submitted by the board to the Commissioner of Professional and Financial Regulation must be sufficient to enable the board to comply with this subchapter. The fiscal resources available to the board must enable it to strengthen its staffing capabilities and those of the Department of the Attorney General's legal and investigative staff so that complaints, including the professional liability related complaints detailed in Title 24, section 2607, are resolved in a timely fashion. [1993, c. 600, Pt. A, §171 (AMD).]

SECTION HISTORY
1985, c. 748, §42 (AMD). 1985, c. 804, §§17,22 (NEW). 1993, c. 600, §A171 (AMD).

§2563. REPORT; LIAISON; LIMITATIONS

On or before August 1st of each year, the board shall submit to the Commissioner of Professional and Financial Regulation, for the preceding fiscal year ending June 30th, its annual report of its operations and financial position, together with such comments and recommendations as the board deems essential. [1985, c. 748, §42 (AMD).]

The commissioner shall act as a liaison between the board and the Governor. [1977, c. 604, §24 (RPR).]

The commissioner may not exercise or interfere with the exercise of discretionary, regulatory or licensing authority granted by statute to the board. The commissioner may require the board to be accessible to the public for complaints and questions during regular business hours and to provide any information the commissioner requires in order to ensure that the board is operating administratively within the requirements of this chapter. [1993, c. 659, Pt. B, §12 (AMD).]

SECTION HISTORY
1973, c. 374, §1 (NEW). 1977, c. 604, §24 (RPR). 1985, c. 748, §42 (AMD). 1993, c. 659, §B12 (AMD).

§2563-A. BUDGET

The board shall submit to the Commissioner of Professional and Financial Regulation its budgetary requirements in the same manner as is provided in Title 5, section 1665, and the commissioner shall in turn transmit these requirements to the Bureau of the Budget without any revision, alteration or change, unless alterations are mutually agreed upon by the department and the board or the board's designee. [1993, c. 659, Pt. B, §13 (AMD).]

SECTION HISTORY

1977, c. 604, §25 (NEW). 1985, c. 748, §42 (AMD). 1993, c. 659, §B13 (AMD).

Subchapter 2: LICENSURE

§2571. LICENSURE; QUALIFICATIONS; FEES

An individual, before engaging in the practice of osteopathic medicine in this State, shall make application for a license to the board, on a form prescribed by the board. The application must be filed with the board at least 60 days before the date of examination together with a fee of not more than $525. The applicant shall present a diploma granted by a school or college of osteopathic medicine approved by the American Osteopathic Association. That applicant shall present evidence of having completed an internship of at least 12 months in a hospital conforming to the minimal standards for accreditation by the American Osteopathic Association, or the equivalency, as determined by the board. All applicants shall provide reasonable and proper facts as the board in its application may require. The board at its discretion may permit an applicant, who is otherwise qualified to be examined during internship, a license to be withheld until successful completion of internship. [2001, c. 492, §1 (AMD).]

All fees set in this chapter are nonrefundable application fees or administrative processing fees payable to the board at the time of application or at the time board action is requested. Unless otherwise specified, the board shall set the fees. [1991, c. 425, §2 (NEW).]

An applicant may not be licensed unless the board finds that the applicant is qualified and that no cause exists, as set forth in section 2591-A, that would be considered grounds for disciplinary action against a licensed physician. [1993, c. 600, Pt. A, §173 (NEW).]

SECTION HISTORY
1973, c. 374, §1 (NEW). 1983, c. 378, §35 (AMD). 1989, c. 462, §5 (AMD). 1991, c. 425, §2 (AMD). 1993, c. 600, §A173 (AMD). 1997, c. 50, §3 (AMD). 2001, c. 492, §1 (AMD).

Subchapter 3: EXAMINATION

§2572. EXAMINATION, REEXAMINATION; ENDORSEMENT; TEMPORARY LICENSURE

Applicants must be examined in whole or in part in writing and must be thorough in subjects the board determines necessary, including osteopathic theories and methods, to determine the competency of the candidate to practice osteopathic medicine in the State. If the examination is passed in a manner satisfactory to the board, the board shall issue to the applicant a license granting the applicant the right to practice osteopathic medicine in this State. If the applicant fails to pass the examination, the applicant is entitled to one reexamination within one year after failure upon payment of a fee set by the board. Osteopathic physicians who have been certified by the National Board of Osteopathic Examiners or have been strictly examined and licensed to practice osteopathic medicine in another state, which has equivalent licensing requirements to this State, may be licensed to practice osteopathic medicine in this State upon the payment of not more than $300 and the substantiation to the board that the applicant is a graduate of a school or college of osteopathic medicine approved by the American Osteopathic Association and that the license was obtained in the other state. The board may at its discretion require an examination of any such applicant. [1997, c. 50, §4 (AMD).]

SECTION HISTORY
1973, c. 374, §1 (NEW). 1983, c. 378, §36 (AMD). 1991, c. 425, §3 (AMD). 1993, c. 600, §A174 (AMD). 1997, c. 50, §4 (AMD).

§2573. TEMPORARY LICENSURE

An osteopathic physician in good repute who is a graduate of a school or college of osteopathic medicine approved by the American Osteopathic Association, serving as a fellow, intern or resident physician in a hospital in this State, shall register with the board and must be issued a temporary license by the board evidencing the right to practice only under hospital control. Such a license may not be issued for a period in excess of one year but may be renewed from time to time, not to exceed an aggregate of 5 years. The license must be in a form prescribed by the board and may be revoked or suspended by the board with the suspension or revocation effective immediately when written notification from the board is received by the hospital. An examination may not be required for applicants for this temporary license. The fee for such a license may not be more than $450. [2001, c. 492, §2 (AMD).]

SECTION HISTORY
1973, c. 374, §1 (NEW). 1991, c. 425, §4 (AMD). 1993, c. 600, §A175 (AMD). 1997, c. 50, §5 (AMD). 2001, c. 492, §2 (AMD).

§2574. LOCUM TENENS

An osteopathic physician who is a graduate of a school or college of osteopathic medicine approved by the American Osteopathic Association and who is of good repute may, at the discretion of the board, be given a temporary license to be effective for not more than 6 months after issuance, for the purpose of permitting the physician to serve as "locum tenens" for another osteopathic physician who is unable, because of illness or some other substantiated reason, to maintain the practice, thus fulfilling a need in that area for providing health services. The fee for such a license may be not more than $600. [2001, c. 492, §3 (AMD).]

SECTION HISTORY
1973, c. 374, §1 (NEW). 1991, c. 425, §5 (AMD). 1993, c. 600, §A176 (AMD). 1997, c. 50, §6 (AMD). 2001, c. 492, §3 (AMD).

§2575. YOUTH CAMP PHYSICIANS

An osteopathic physician who is a graduate of a school or college of osteopathic medicine approved by the American Osteopathic Association and who is of good repute may, at the discretion of the board, make application for a temporary license to practice as a youth camp physician at a specified youth camp licensed under Title 22, section 2495. Such an osteopathic physician is entitled to practice only on the patients at the youth camp. The license must be obtained each year. Applications for such a temporary license must be made in the same manner as for regular licenses. An examination may not be exacted from applicants for temporary licenses. The fee may not be more than $600. [2009, c. 211, Pt. B, §27 (AMD).]

SECTION HISTORY
1973, c. 374, §1 (NEW). 1991, c. 425, §6 (AMD). 1993, c. 600, §A177 (AMD). 1997, c. 50, §7 (AMD). 2001, c. 492, §4 (AMD). 2009, c. 211, Pt. B, §27 (AMD).

§2576. VISITING INSTRUCTORS

A temporary visiting instructor's license may be granted an osteopathic physician who holds a current and valid license to practice osteopathic medicine in another state. This license entitles the osteopathic physician to practice in this State when that physician is performing osteopathic medical procedures as a part of a course or courses of instruction in continuing medical education in a hospital in this State. The annual fee for such a temporary license may not be more than $150. The license issued pursuant to this section is for a duration set by the board. Such a temporary license may be revoked for any one of the reasons in section 2591-A. [2001, c. 492, §5 (AMD).]

SECTION HISTORY

1973, c. 374, §1 (NEW). 1991, c. 425, §7 (AMD). 1993, c. 600, §A178 (AMD). 2001, c. 492, §5 (AMD).

§2577. JOINT PROGRAM INTERNS

An applicant who is enrolled in a program of medical and graduate medical training conducted jointly by a college or university having the power to grant a D.O. degree and accredited by the American Osteopathic Association and a graduate medical education program approved by the American Osteopathic Association may receive a temporary educational certificate from the board to act as a hospital intern as part of that graduate medical education program as long as the applicant is concurrently enrolled in the final year of medical training and initial year of graduate medical education. The board may not issue a certificate pursuant to this section for a period longer than that required to obtain the D.O. degree. The period during which the certificate is in force may not be considered as satisfaction of the requirement for postgraduate medical education under section 2571. [1995, c. 337, §1 (NEW).]

SECTION HISTORY
1995, c. 337, §1 (NEW).

Subchapter 4: LICENSES

§2581. LICENSES; BIENNIAL RELICENSURE; FEES; REINSTATEMENT

Upon satisfactorily qualifying for licensure, the applicant may be issued a license by the board, which is dated and signed by its members and upon which the official seal of the board is affixed. The license must designate the holder as a physician licensed to practice osteopathic medicine in the State of Maine. The license must be publicly displayed at the individual's principal place of practice. [1993, c. 600, Pt. A, §180 (AMD).]

Every osteopathic physician legally licensed to practice in this State, shall, on or before the expiration date of the osteopathic physician's license, pay to the board a fee set by the board not to exceed $600 for the renewal of the osteopathic physician's license to practice. An osteopathic physician's license is issued for a period of 2 years and must be renewed in accordance with a schedule adopted by the board by rule. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A. In addition to the payment of the renewal fee, each licensee applying for the renewal of the osteopathic physician's license shall furnish to the board satisfactory evidence that the osteopathic physician has attended in the 2 preceding years at least 100 hours of educational programs devoted to continuing medical education approved by the board. The required education must be obtained from formalized programs of continuing medical education sponsored by recognized associations, colleges or universities, hospitals, institutes or groups approved by the board. A copy of the current approved list must be available in the office of the secretary-treasurer of the board. At least 40% of these credit hours must be osteopathic medical education approved in the rules established by the board. The board may adjudicate continuing medical education performance in situations of illness, hardship or military service upon written petition by the applicant. The secretary-treasurer of the board shall send a written notice of the foregoing requirements to each osteopathic physician, at least 60 days prior to each osteopathic physician's license expiration date, directed to the last known address of the licensee and enclosing with the notice proper blank forms for application for renewal. If a licensee fails to furnish the board evidence of attendance at continuing medical educational programs, as approved by the board, fails to pay the renewal fee or fails to submit a completed application for renewal, the osteopathic physician automatically forfeits the right to practice osteopathic medicine in this State. After the expiration of a license, the board shall send notice by first class mail to each licensee who has failed to meet the requirements for renewal. If the failure is not corrected within 30 days, then the osteopathic physician's license may be considered lapsed by the board. The secretary-treasurer of the board may reinstate the osteopathic physician upon the presentation of satisfactory evidence of continuing medical education as outlined and approved by the board and upon payment of the renewal fee. [2001, c. 492, §6 (AMD).]

Relicensure fees provided for under this section are not required of an osteopathic physician who is 70 years of age or older on the first day of January of the year in which the relicensure is made, although the requirements for continuing medical education apply without regard to age. [1993, c. 600, Pt. A, §180 (AMD).]

The license entitles an individual to whom it is granted the privilege to practice osteopathic medicine in any county in this State, in all its branches as taught in a school or college of osteopathic medicine approved by the American Osteopathic Association with the right to use drugs that are necessary in the practice of osteopathic medicine. [1997, c. 50, §8 (AMD).]

An individual to whom a license is granted under this section shall designate that individual's status as an osteopathic physician either by the letters D.O. following the licensee's name or by the words "osteopathic physician" following or accompanying the licensee's name when the prefix Doctor or Dr. is used. [1993, c. 600, Pt. A, §180 (AMD).]

An applicant not complying with relicensure requirements is entitled to be reinstated upon paying the relicensure fee for the given year and satisfying the board that the applicant has paid all relicensure fees due at the time of the applicant's withdrawal, and that a cause does not exist for revoking or suspending the applicant's license. The board shall determine the skill and competence of an osteopathic physician applying for a reinstatement who has not been engaged in the active practice of osteopathic medicine in this or some other state for a period in excess of one year from the date of the physician's most recent relicensure in Maine. [1993, c. 600, Pt. A, §180 (AMD).]

SECTION HISTORY
1973, c. 374, §1 (NEW). 1985, c. 804, §§18,22 (AMD). 1989, c. 462, §6 (AMD). 1991, c. 425, §8 (AMD). 1993, c. 600, §A180 (AMD). 1997, c. 50, §8 (AMD). 2001, c. 492, §6 (AMD).

Subchapter 5: SUSPENSION AND REVOCATION

§2591. COMPLAINTS; INVESTIGATIONS; HEARINGS; CENSURE; PROBATION; SUSPENSION; REVOCATION

(REPEALED)

SECTION HISTORY
1973, c. 374, §1 (NEW). 1977, c. 694, §§599,600 (AMD). 1983, c. 378, §37 (RP).

§2591-A. DISCIPLINARY ACTIONS

1. **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.

The board shall notify the licensee of the content of a complaint filed against the licensee as soon as possible, but, absent unusual circumstances justifying delay, not later than 60 days from receipt of this information. The licensee shall respond within 30 days. The board shall share the licensee's response with the complainant, unless the board determines that it would be detrimental to the health of the complainant to obtain the response. 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 the complaint 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 complainant may attend and may be accompanied by up to 2 individuals, including legal counsel. The

conference must be conducted in executive session of the board, pursuant to Title 1, section 405, unless otherwise requested by the licensee. Before the board decides what action to take at the conference or as a result of the conference, the board shall give the complainant a reasonable opportunity to speak. Statements made at the conference may not be introduced at a subsequent formal hearing unless all parties consent.

When a complaint has been filed against a licensee and the licensee moves or has moved to another state, the board may report to the appropriate licensing board in that state the complaint that has been filed, other complaints in the licensee's record on which action was taken and disciplinary actions of the board with respect to that licensee.

When an individual applies for a license under this chapter, the board may investigate the professional record of that individual, including professional records that the individual may have as a licensee in other states. The board may deny a license or authorize a restricted license based on the record of the applicant in other states.

If the board 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. 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; [1993, c. 600, Pt. A, §181 (AMD).]

B. 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 that 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; [1993, c. 600, Pt. A, §181 (AMD).]

C. If the board concludes that modification or nonrenewal of the license is in order, the board shall hold an adjudicatory hearing in accordance with the provisions of Title 5, chapter 375, subchapter IV; or [1997, c. 680, Pt. B, §2 (AMD).]

D. If the board concludes that suspension or revocation of the license is in order, the board shall file a complaint in the District Court in accordance with Title 4, chapter 5. [1999, c. 547, Pt. B, §64 (AMD); 1999, c. 547, Pt. B, §80 (AFF).]

[1999, c. 547, Pt. B, §64 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

2. **Grounds for discipline.** The board may suspend or revoke a license pursuant to Title 5, section 10004. The following are grounds for an action to refuse to issue, modify, restrict, suspend, revoke or refuse to renew the license of an individual licensed under this chapter:

A. The practice of fraud or deceit in obtaining a license under this chapter or in connection with service rendered within the scope of the license issued; [1983, c. 378, §38 (NEW).]

B. Misuse of alcohol, drugs or other substances that has resulted or may result in the licensee performing services in a manner that endangers the health or safety of the licensee's patients; [2013, c. 105, §6 (AMD).]

C. A professional diagnosis of a mental or physical condition that has resulted or may result in the licensee performing the licensee's duties in a manner that endangers the health or safety of the licensee's patients; [1993, c. 600, Pt. A, §181 (AMD).]

D. Aiding or abetting the practice of osteopathic medicine by an individual not duly licensed under this chapter and who claims to be legally licensed; [1993, c. 600, Pt. A, §181 (AMD).]

E. Incompetence in the practice for which the licensee is licensed. A licensee is considered incompetent in the practice if the licensee has:

(1) Engaged in conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client or patient or the general public; or

(2) Engaged in conduct that evidences a lack of knowledge, or inability to apply principles or skills to carry out the practice for which the licensee is licensed; [1993, c. 600, Pt. A, §181 (AMD).]

F. Unprofessional conduct. A licensee is considered to have engaged in unprofessional conduct if the licensee violates a standard of professional behavior that has been established in the practice for which the licensee is licensed; [1993, c. 600, Pt. A, §181 (AMD).]

G. Subject to the limitations of Title 5, chapter 341, conviction of a crime that involves dishonesty or false statement or that relates directly to the practice for which the licensee is licensed, or conviction of a crime for which incarceration for one year or more may be imposed; [1993, c. 600, Pt. A, §181 (AMD).]

H. A violation of this chapter or a rule adopted by the board; [1993, c. 600, Pt. A, §181 (AMD).]

I. Engaging in false, misleading or deceptive advertising; [1983, c. 378, §38 (NEW).]

J. Advertising, practicing or attempting to practice under a name other than one's own; [1983, c. 378, §38 (NEW).]

K. [1997, c. 680, Pt. B, §4 (RP).]

L. Division of professional fees not based on actual services rendered; [1997, c. 680, Pt. B, §5 (AMD).]

M. Failure to comply with the requirements of Title 24, section 2905-A; or [1997, c. 680, Pt. B, §6 (AMD).]

N. Revocation, suspension or restriction of a license to practice medicine or other disciplinary action; denial of an application for a license; or surrender of a license to practice medicine following the institution of disciplinary action by another state or a territory of the United States or a foreign country if the conduct resulting in the disciplinary or other action involving the license would, if committed in this State, constitute grounds for discipline under the laws or rules of this State. [1997, c. 680, Pt. B, §7 (NEW).]

[2013, c. 105, §6 (AMD) .]

3. **Report.** By March 1st of each year, the board shall submit to the Legislature a report consisting of statistics on the following for the preceding year:

A. The number of complaints against licensees received from the public or filed on the board's own motion; [1989, c. 462, §7 (NEW).]

B. The number of complaints dismissed for lack of merit or insufficient evidence of grounds for discipline; [1989, c. 462, §7 (NEW).]

C. The number of cases in process of investigation or hearing carried over at year end; and [1989, c. 462, §7 (NEW).]

D. The number of disciplinary actions finalized during the report year as tabulated and categorized by the annual statistical summary of the Physician Data Base of the Federation of State Medical Boards of the United States, Inc. [1989, c. 462, §7 (NEW).]

[1989, c. 462, §7 (NEW) .]

SECTION HISTORY

1983, c. 378, §38 (NEW). 1989, c. 291, §§2,3 (AMD). 1989, c. 462, §7 (AMD). 1993, c. 600, §A181 (AMD). 1997, c. 680, §§B2-7 (AMD). 1999, c. 547, §B64 (AMD). 1999, c. 547, §B80 (AFF). 2013, c. 105, §6 (AMD).

Subchapter 6: HEARINGS; APPEALS

§2592. DISCIPLINARY ACTION

(REPEALED)

SECTION HISTORY
1973, c. 374, §1 (NEW). 1975, c. 770, §184 (AMD). 1977, c. 694, §601 (RPR). 1983, c. 378, §39 (RP).

§2592-A. REPORTING AND INVESTIGATION OF COMPLAINTS

When an action is taken against a licensee and the licensee moves or has moved to another state, the board may report to the appropriate licensing board in that state the complaint that has been filed, any other complaints in the physician's record on which action was taken and disciplinary actions of the board with respect to that physician. [1993, c. 600, Pt. A, §182 (AMD).]

When an individual applies for a license under this chapter, the board may investigate the professional record of that individual, including professional records that the individual may have as a licensee in other states. The board may deny a license or authorize a restricted license based on the record of the applicant in other states. [1993, c. 600, Pt. A, §182 (AMD).]

SECTION HISTORY
1991, c. 534, §6 (NEW). 1993, c. 600, §A182 (AMD).

Subchapter 7: GENERAL PROVISIONS

§2593. MENTAL OR PHYSICAL EXAMINATION OF LICENSEE LICENSED TO PRACTICE IN MAINE

For the purpose of this chapter, an osteopathic physician is, by so practicing, deemed to have given consent to a mental or physical examination when directed in writing by the board and to have waived all objections to the admissibility of the examining physician's testimony or examination on the grounds that it constitutes privileged communication. These examinations must be conducted by a qualified individual from a list of 5 provided by the board. [1993, c. 600, Pt. A, §183 (AMD).]

SECTION HISTORY
1973, c. 374, §1 (NEW). 1993, c. 600, §A183 (AMD).

§2594. IMMUNITY OF LICENSEE RENDERING EMERGENCY CARE

An osteopathic physician licensed under this chapter, who, in the exercise of due care, renders emergency care at the scene of an accident, is not liable for any civil damages as the result of acts or omissions by such an individual in rendering emergency care. [1993, c. 600, Pt. A, §183 (AMD).]

SECTION HISTORY
1973, c. 374, §1 (NEW). 1993, c. 600, §A183 (AMD).

§2594-A. ASSISTANTS

Nothing contained in this chapter may be construed to prohibit an individual from rendering medical services if these services are rendered under the supervision and control of a physician and if the individual has satisfactorily completed a training program approved by the Board of Osteopathic Licensure. Supervision and control may not be construed as requiring the personal presence of the supervising and controlling physician at the place where these services are rendered, unless a physical presence is necessary to provide patient care of the same quality as provided by the physician. Nothing in this chapter may be construed as prohibiting a physician from delegating to the physician's employees or support staff certain activities relating to medical care and treatment carried out by custom and usage when these activities are under the direct control of the physician. The physician delegating these activities to employees or support staff, to program graduates or to participants in an approved training program is legally liable for the activities of those individuals, and any individual in this relationship is considered the physician's agent. Nothing contained in this section may be construed to apply to registered nurses acting pursuant to chapter 31. [2013, c. 33, §1 (AMD).]

When the delegated activities are part of the practice of optometry as defined in chapter 34-A, then the individual to whom these activities are delegated must possess a valid license to practice optometry in Maine or otherwise may perform only as a technician within the established office of a physician and may act solely on the order of and under the responsibility of a physician skilled in the treatment of eyes as designated by the proper professional board and without assuming evaluation or interpretation of examination findings by prescribing corrective procedures to preserve, restore or improve vision. [1993, c. 600, Pt. A, §184 (AMD).]

SECTION HISTORY
1973, c. 788, §159 (NEW). 1993, c. 600, §A184 (AMD). 2013, c. 33, §1 (AMD).

§2594-B. LICENSES OF QUALIFICATION; PHYSICIAN'S STATEMENT

1. **License required.** A physician assistant may not practice under the supervision of an osteopathic physician until the physician assistant has applied for and obtained a license issued by the Board of Osteopathic Licensure, which must be renewed biennially.

A. [1993, c. 600, Pt. A, §185 (RP).]

B. [1993, c. 600, Pt. A, §185 (RP).]

[1997, c. 271, §5 (AMD) .]

2. **Statement by supervisory physician.** All applications for licensure must be accompanied by an application by the proposed supervisory physician, which application must contain a statement that that physician is responsible for all medical activities of the physician assistant.

[1993, c. 600, Pt. A, §185 (AMD) .]

3. **Employment.**

[2013, c. 101, §2 (RP) .]

4. **Delegation by physician assistant.** A physician assistant may delegate medical acts to a medical assistant employed by the physician assistant or by an employer of the physician assistant as long as that delegation is permitted in the plan of supervision established by the physician assistant and the supervisory physician.

[2013, c. 101, §3 (NEW) .]

SECTION HISTORY
1977, c. 391, (NEW). 1993, c. 600, §A185 (AMD). 1997, c. 271, §5 (AMD). 2013, c. 101, §§2, 3 (AMD).

§2594-C. RULES

1. **Rules authorized.** The board may adopt rules, which must be adopted jointly with the Board of Licensure in Medicine, dealing with osteopathic physician assistants as are necessary to carry out sections 2594-A to 2594-D. The rules must provide for the issuance of a single license regardless of the number of practice sites or supervisory physicians.

[2013, c. 101, §4 (AMD) .]

2. **Content.** The rules authorized under this section may include, but are not limited to rules in the following areas:

A. Training programs for and licensure of physician assistants; [1993, c. 600, Pt. A, §186 (AMD).]

B. Information to be included in applications submitted by physician assistants for licensure; [1993, c. 600, Pt. A, §186 (AMD).]

C. Information to be included in applications submitted by proposed supervisory physicians; [1977, c. 391, (NEW).]

D. Knowledge and skills to be required of the physician assistants; [1977, c. 391, (NEW).]

E. The agency relationship to be required between supervising physicians and physician assistants; [1977, c. 391, (NEW).]

F. Requirements with respect to the supervisory physician's supervision of medical services provided by physician assistants; [1993, c. 600, Pt. A, §186 (AMD).]

G. The methods of performance to be required of physician assistants; [1977, c. 391, (NEW).]

H. Requirements for initial licensure, including fees, which may not exceed $150; [2001, c. 492, §7 (AMD).]

I. Requirements for annual licensure, including fees, which may not exceed $125; [2001, c. 492, §7 (AMD).]

J. Provisions relating to physician assistant trainees; [1991, c. 425, §9 (AMD).]

K. Continuing education requirements, as a precondition to annual licensure; [1993, c. 600, Pt. A, §186 (AMD).]

L. Requirements for physician supervision of physician extenders, including fees, which may not exceed $150; and [2001, c. 492, §8 (AMD).]

M. Requirements for transfer of licensure by a physician extender to another physician, including fees, which may not exceed $50. [2001, c. 492, §8 (AMD).]

[2001, c. 492, §§7, 8 (AMD) .]

SECTION HISTORY
1977, c. 391, (NEW). 1991, c. 425, §§9,10 (AMD). 1993, c. 600, §A186 (AMD). 2001, c. 492, §§7,8 (AMD). 2013, c. 101, §4 (AMD).

§2594-D. TERMINATION OF LICENSE

1. **Grounds for discipline.** A physician assistant is subject to the sanction of section 2591-A, if the assistant:

A. Claims to be, or permits another to represent that physician assistant as a licensed physician; [1993, c. 600, Pt. A, §187 (AMD).]

B. Has performed otherwise than at the direction of and under the supervision of a physician licensed by the board; [1983, c. 378, §40 (RPR).]

C. Has been delegated and has performed a task beyond that physician assistant's competence; [1993, c. 600, Pt. A, §187 (AMD).]

[1993, c. 600, Pt. A, §187 (AMD) .]

2. **Consent to physical or mental examination; objections to admissibility of physician's testimony waived.** For the purposes of this section, every physician assistant licensed under these rules who accepts the responsibility of rendering medical services in this State by the filing of an application and of annual licensure:

A. Is deemed to have given consent to a mental or physical examination when directed in writing by the board; and [1993, c. 600, Pt. A, §187 (AMD).]

B. Is deemed to have waived all objections to the admissibility of the examining physician's testimony or reports on the ground that these constitute a privileged communication. [1993, c. 600, Pt. A, §187 (AMD).]

Pursuant to Title 4, section 184, subsection 6, the District Court shall immediately suspend the license of a physician assistant who can be shown, through the results of the medical or physical examination conducted under this section or through other competent evidence, to be unable to render medical services with reasonable skill and safety to patients by reason of mental illness, alcohol intemperance, excessive use of drugs or narcotics or as a result of a mental or physical condition interfering with the competent rendering of medical services.

[1999, c. 547, Pt. B, §65 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

3. **Jurisdiction.**

[1977, c. 694, §604 (RP) .]

4. **Enforcement.**

[1977, c. 694, §604 (RP) .]

SECTION HISTORY
1977, c. 391, (NEW). 1977, c. 694, §§602-604 (AMD). 1983, c. 378, §40 (AMD). 1993, c. 600, §A187 (AMD). 1999, c. 547, §B65 (AMD). 1999, c. 547, §B80 (AFF).

§2595. TREATMENT OF MINORS

An individual licensed under this chapter who renders medical care to a minor for treatment of venereal disease or abuse of drugs or alcohol or for the collection of sexual assault evidence through a sexual assault forensic examination is under no obligation to obtain the consent of the minor's parent or guardian or to inform the parent or guardian of the treatment. Nothing in this section may be construed so as to prohibit the licensed individual rendering the treatment from informing the parent or guardian. For purposes of this section, "abuse of drugs" means the use of drugs solely to induce a stimulant, depressant or hallucinogenic effect upon the higher functions of the central nervous system and not as a therapeutic agent recommended by a practitioner in the course of medical treatment. [1999, c. 90, §3 (AMD).]

SECTION HISTORY
1973, c. 374, §1 (NEW). 1979, c. 96, §2 (AMD). 1993, c. 600, §A188 (AMD). 1999, c. 90, §3 (AMD).

§2596. REVIEW COMMITTEE MEMBER IMMUNITY

A physician licensed under this chapter who is a member of a utilization review committee or a peer review committee that is a requirement of accreditation by the American Osteopathic Association or is established and operated under the auspices of the physician's respective state or county professional society or the Board of Osteopathic Licensure is immune from civil liability for undertaking or failing to undertake an act within the scope of the function of the committee. [1993, c. 600, Pt. A, §189 (AMD).]

SECTION HISTORY
1973, c. 374, §1 (NEW). 1975, c. 83, §1 (RPR). 1987, c. 646, §9 (RPR). 1993, c. 600, §A189 (AMD).

§2596-A. ESTABLISHMENT OF PROTOCOLS FOR OPERATION OF A PROFESSIONAL REVIEW COMMITTEE

The board shall establish a protocol to govern the operation of a professional review committee as defined in Title 24, section 2502, subsection 4-A. The protocol must require the professional review committee to submit to the board information specified by the board regarding reports received by the professional review committee, as well as an annotated list of contacts or investigations made by the professional review committee and the disposition of each report, except that the committee may not be compelled to disclose information that may serve to identify the subject of a report. The protocol may not prohibit an impaired physician from seeking alternative forms of treatment. [1993, c. 600, Pt. A, §190 (NEW).]

SECTION HISTORY
1993, c. 600, §A190 (NEW).

§2597. SAVING CLAUSE

This chapter shall have no application to the licensing or practice of allopathic physicians, dentists, chiropractors, optometrists, veterinarians, podiatrists or nurses. [1973, c. 374, §1 (NEW).]

SECTION HISTORY
1973, c. 374, §1 (NEW).

§2598. PENALTY

An individual who attempts to practice osteopathic medicine without proper license or who induces the belief that that individual is legally engaged in the practice of osteopathic medicine without having fully complied with all requirements of law commits a Class E crime; except that nothing in this chapter may be construed to prohibit a lawfully qualified osteopathic physician in another state meeting a licensed osteopathic physician in this State for consultation. [1993, c. 600, Pt. A, §191 (AMD).]

SECTION HISTORY
1973, c. 374, §1 (NEW). 1991, c. 797, §16 (AMD). 1993, c. 600, §A191 (AMD).

§2599. RECORDS OF PROCEEDINGS OF HOSPITAL MEDICAL STAFF REVIEW COMMITTEES CONFIDENTIAL

All proceedings and records of proceedings concerning medical staff reviews and hospital reviews conducted by committees of physicians and other health care personnel on behalf of hospitals located within the State, when these reviews are required by state or federal law or regulations or as a condition of accreditation by the Joint Commission on Accreditation of Hospitals or the American Osteopathic Association Committee on Hospital Accreditation are confidential and are exempt from discovery without a showing of good cause. [1993, c. 600, Pt. A, §192 (AMD).]

Provision of information protected by this section to the board pursuant to Title 24, section 2506 does not waive or otherwise affect the confidentiality of the records or the exemption from discovery provided by this section for any other purpose. [1997, c. 271, §6 (NEW).]

SECTION HISTORY
1975, c. 137, §1 (NEW). 1993, c. 600, §A192 (AMD). 1997, c. 271, §6 (AMD).

§2599-A. PROMULGATION OF COMPLAINT PROCEDURES

(REPEALED)

SECTION HISTORY
1989, c. 462, §8 (NEW). 1993, c. 600, §A193 (RP).

§2599-B. CONSUMER INFORMATION

(REPEALED)

SECTION HISTORY
1993, c. 600, §A194 (NEW). 1995, c. 370, §3 (RP).

§2600. RELEASE OF CONTACT LENS PRESCRIPTION

After contact lenses have been adequately fitted and the patient released from immediate follow-up care by the physician, the patient may request a copy of the contact lens specifications from the physician. The physician shall provide a copy of the prescription, at no cost, which must contain the information necessary to properly duplicate the current prescription. The contact lens prescription must contain an expiration date not to exceed 24 months from the date of issue. The prescription may contain fitting guidelines and may also contain specific instructions for use by the patient. [1997, c. 117, §5 (AMD).]

The prescribing physician is not liable for an injury or condition to a patient that results from negligence in packaging, manufacturing or dispensing lenses by anyone other than the prescribing physician. [1993, c. 600, Pt. A, §195 (AMD).]

The dispensing party may dispense contact lenses only upon receipt of a written prescription, except that a physician may fill a prescription of an optometrist or another physician without a copy of the prescription. Mail order contact lens suppliers must be licensed by and register with the Board of Commissioners of the Profession of Pharmacy pursuant to section 13751, subsection 3-A and are subject to discipline by that board for violations of that board's rules and the laws governing the board. An individual who fills a contact lens prescription shall maintain a file of that prescription for a period of 5 years. An individual, corporation or other entity, other than a mail order contact lens supplier, that improperly fills a contact lens prescription or fills an expired prescription commits a civil violation for which a forfeiture of not less than $250 nor more than $1,000 may be adjudged. [1997, c. 117, §6 (AMD).]

An individual may file a complaint with the board seeking disciplinary action concerning violations of this section. The board shall investigate or cause to be investigated and shall resolve a complaint on its own motion or upon receipt of a written complaint. The board shall conduct its actions in accordance with the Maine Administrative Procedure Act. [1993, c. 600, Pt. A, §195 (AMD).]

SECTION HISTORY
1991, c. 675, §4 (NEW). 1993, c. 600, §A195 (AMD). 1997, c. 117, §§5,6 (AMD).

§2600-A. CONFIDENTIALITY OF PERSONAL INFORMATION OF APPLICANT OR LICENSEE

An applicant or licensee shall provide the board with a current professional address and telephone number, which will be their public contact address, and a personal residence address and telephone number. An applicant's or licensee's personal residence address and telephone number is confidential information and may not be disclosed except as permitted by this section or as required by law, unless the personal residence address and telephone number have been provided as the public contact address. Personal health information submitted as part of any application is confidential information and may not be disclosed except as permitted by this section or as required by law. The personal health information and personal residence address and telephone number may be provided to other governmental licensing or disciplinary authorities or to any health care providers located within or outside this State that are concerned with granting, limiting or denying a physician's employment or privileges. [2001, c. 214, §1 (NEW).]

SECTION HISTORY
2001, c. 214, §1 (NEW).

§2600-B. EXPEDITED PARTNER THERAPY

An individual licensed under this chapter may not be disciplined for providing expedited partner therapy in accordance with the provisions of Title 22, chapter 251, subchapter 3, article 5. [2009, c. 533, §3 (NEW).]

SECTION HISTORY
2009, c. 533, §3 (NEW).

Chapter 37: OSTEOPATHS

Subchapter 1: GENERAL PROVISIONS

§2601.

(REPEALED)

SECTION HISTORY
1973, c. 374, §2 (RP).

§2602.

(REPEALED)

SECTION HISTORY
1973, c. 374, §2 (RP).

§2603.

(REPEALED)

SECTION HISTORY
1973, c. 374, §2 (RP).

§2604.

(REPEALED)

SECTION HISTORY
1973, c. 374, §2 (RP).

§2605.

(REPEALED)

SECTION HISTORY
1973, c. 374, §2 (RP).

§2606.

(REPEALED)

SECTION HISTORY
1969, c. 590, §60A (NEW). 1971, c. 237, §2 (AMD). 1973, c. 145, §2 (RPR). 1973, c. 374, §2 (RP).

§2607.

(REPEALED)

SECTION HISTORY
1971, c. 361, (NEW). 1973, c. 374, §2 (RP).

§2608.

(REPEALED)

SECTION HISTORY
1973, c. 514, §1 (NEW). 1973, c. 788, §160 (RP).

Subchapter 2: BOARD OF OSTEOPATHIC EXAMINATION AND REGISTRATION

§2651.

(REPEALED)

SECTION HISTORY
1973, c. 374, §2 (RP).

§2652.

(REPEALED)

SECTION HISTORY
1973, c. 374, §2 (RP).

§2653.

(REPEALED)

SECTION HISTORY
1973, c. 374, §2 (RP).

§2654.

(REPEALED)

SECTION HISTORY
1973, c. 374, §2 (RP).

Subchapter 3: REGISTRATION

§2701.

(REPEALED)

SECTION HISTORY
1969, c. 433, §84 (AMD). 1971, c. 544, §116 (AMD). 1971, c. 598, §72 (AMD). 1973, c. 374, §2 (RP).

§2702.

(REPEALED)

SECTION HISTORY
1973, c. 374, §2 (RP).

§2703.

(REPEALED)

SECTION HISTORY
1973, c. 374, §2 (RP).

§2704.

(REPEALED)

SECTION HISTORY
1973, c. 374, §2 (RP).

§2705.

(REPEALED)

SECTION HISTORY
1973, c. 374, §2 (RP).

Chapter 38: OUTDOOR ADVERTISING

§2711.

(REPEALED)

SECTION HISTORY
1969, c. 257, §1 (NEW). 1977, c. 494, §2 (RP).

§2712.

(REPEALED)

SECTION HISTORY
1969, c. 257, §1 (NEW). 1977, c. 494, §2 (RP).

§2713.

(REPEALED)

SECTION HISTORY
1969, c. 257, §1 (NEW). 1973, c. 190, §1 (AMD). 1977, c. 494, §2 (RP).

§2714.

(REPEALED)

SECTION HISTORY
1969, c. 257, §1 (NEW). 1971, c. 473, §1 (AMD). 1973, c. 190, §§2,3 (AMD). 1977, c. 494, §2 (RP).

§2715.

(REPEALED)

SECTION HISTORY
1969, c. 257, §1 (NEW). 1971, c. 473, §2 (AMD). 1977, c. 494, §2 (RP).

§2716.

(REPEALED)

SECTION HISTORY
1969, c. 257, §1 (NEW). 1971, c. 473, §§3,4 (AMD). 1973, c. 190, §§4,5,7,8 (AMD). 1973, c. 221, (AMD). 1973, c. 625, §216 (AMD). 1977, c. 494, §2 (RP).

§2717.

(REPEALED)

SECTION HISTORY
1969, c. 257, §1 (NEW). 1973, c. 190, §6 (AMD). 1977, c. 494, §2 (RP).

§2718.

(REPEALED)

SECTION HISTORY
1969, c. 257, §1 (NEW). 1977, c. 494, §2 (RP).

§2719.

(REPEALED)

SECTION HISTORY
1969, c. 257, §1 (NEW). 1973, c. 625, §217 (AMD). 1977, c. 494, §2 (RP).

§2720.

(REPEALED)

SECTION HISTORY
1969, c. 257, §1 (NEW). 1977, c. 494, §2 (RP).

§2721.

(REPEALED)

SECTION HISTORY
1969, c. 257, §1 (NEW). 1977, c. 494, §2 (RP).

§2722.

(REPEALED)

SECTION HISTORY
1969, c. 257, §1 (NEW). 1977, c. 494, §2 (RP).

§2723.

(REPEALED)

SECTION HISTORY
1969, c. 257, §1 (NEW). 1977, c. 494, §2 (RP).

Chapter 39: OUTDOOR ADVERTISERS

§2751.

(REPEALED)

SECTION HISTORY
1969, c. 257, §2 (RP).

§2752.

(REPEALED)

SECTION HISTORY
1969, c. 257, §2 (RP).

§2753.

(REPEALED)

SECTION HISTORY
1969, c. 257, §2 (RP).

§2754.

(REPEALED)

SECTION HISTORY
1969, c. 257, §2 (RP).

§2755.

(REPEALED)

SECTION HISTORY
1969, c. 257, §2 (RP).

§2756.

(REPEALED)

SECTION HISTORY
1969, c. 257, §2 (RP).

§2757.

(REPEALED)

SECTION HISTORY
1969, c. 257, §2 (RP).

§2758.

(REPEALED)

SECTION HISTORY
1969, c. 257, §2 (RP).

§2759.

(REPEALED)

SECTION HISTORY
1969, c. 257, §2 (RP).

§2760.

(REPEALED)

SECTION HISTORY
1969, c. 257, §2 (RP).

§2761.

(REPEALED)

SECTION HISTORY
1969, c. 257, §2 (RP).

§2762.

(REPEALED)

SECTION HISTORY
1969, c. 257, §2 (RP).

§2763.

(REPEALED)

SECTION HISTORY
1969, c. 257, §2 (RP).

§2764.

(REPEALED)

SECTION HISTORY
1969, c. 257, §2 (RP).

Chapter 41: PHARMACISTS

Subchapter 1: GENERAL PROVISIONS HEADING: PL 1987, C. 710, §4 (RP)

§2801. REGISTRATION REQUIRED; EXCEPTIONS

(REPEALED)

SECTION HISTORY
1965, c. 329, (AMD). 1971, c. 282, §§4,12,13 (AMD). 1987, c. 710, §4 (RP).

§2802. EMPLOYMENT OF REGISTERED PHARMACIST

(REPEALED)

SECTION HISTORY
1971, c. 282, §§5,12 (AMD). 1987, c. 710, §4 (RP).

§2803. USE OF PHARMACIST'S NAME FORBIDDEN

(REPEALED)

SECTION HISTORY
1971, c. 282, §12 (AMD). 1987, c. 710, §4 (RP).

§2804. PENALTIES

(REPEALED)

SECTION HISTORY
1971, c. 282, §12 (AMD). 1987, c. 710, §4 (RP).

§2805. DEFINITIONS

(REPEALED)

SECTION HISTORY
1971, c. 282, §6 (NEW). 1977, c. 478, (AMD). 1979, c. 176, §1 (AMD). 1987, c. 710, §4 (RP).

§2806. PRESCRIBING AND DISPENSING OF DRUGS

(REPEALED)

SECTION HISTORY
1975, c. 476, §1 (NEW). 1977, c. 611, (AMD). 1987, c. 710, §4 (RP).

§2807. AUTHORIZATION TO FILL NONRESIDENT PRESCRIPTIONS

(REPEALED)

SECTION HISTORY
1979, c. 176, §2 (NEW). 1987, c. 710, §4 (RP).

Subchapter 2: BOARD OF COMMISSIONERS
HEADING: PL 1987, C. 710, §4 (RP)

§2851. NOMINATION AND APPOINTMENT; TENURE; VACANCIES; COMPENSATION; EXPENSES

(REPEALED)

SECTION HISTORY
1967, c. 390, §§15,16 (AMD). 1971, c. 282, §§7,13 (AMD). 1975, c. 575, §§34,35 (AMD). 1975, c. 588, (AMD). 1975, c. 770, §185 (AMD). 1975, c. 771, §§357,358 (AMD). 1977, c. 78, §180 (AMD). 1977, c. 231, (AMD). 1977, c. 408, (AMD). 1977, c. 564, §121A (AMD). 1981, c. 77, (AMD). 1983, c. 47, (AMD). 1983, c. 812, §§224,225 (AMD). 1987, c. 710, §4 (RP).

§2852. MEETINGS; ELECTION OF CHAIRMAN

(REPEALED)

SECTION HISTORY
1971, c. 208, §1 (RPR). 1987, c. 710, §4 (RP).

§2853. EMPLOYEES

(REPEALED)

SECTION HISTORY
1971, c. 208, §2 (AMD). 1985, c. 785, §B136 (AMD). 1987, c. 710, §4 (RP).

§2854. RECORDS AND REPORTS

(REPEALED)

SECTION HISTORY
1975, c. 771, §359 (AMD). 1977, c. 604, §26 (AMD). 1985, c. 748, §42 (AMD). 1987, c. 710, §4 (RP).

§2854-A. LIAISON; LIMITATIONS

(REPEALED)

SECTION HISTORY
1977, c. 604, §27 (NEW). 1987, c. 710, §4 (RP).

§2854-B. BUDGET

(REPEALED)

SECTION HISTORY
1977, c. 604, §27 (NEW). 1985, c. 748, §42 (AMD). 1987, c. 710, §4 (RP).

§2855. COMPLAINTS

(REPEALED)

SECTION HISTORY
1967, c. 390, §17 (AMD). 1971, c. 282, §8 (RPR). 1983, c. 378, §41 (RP).

§2856. SUSPENSION OR REVOCATION OF CERTIFICATES

(REPEALED)

SECTION HISTORY
1971, c. 282, §9 (AMD). 1973, c. 303, §3 (AMD). 1981, c. 426, (RPR). 1983, c. 378, §42 (RP).

§2856-A. DISCIPLINARY ACTIONS

(REPEALED)

SECTION HISTORY
1983, c. 378, §43 (NEW). 1987, c. 710, §4 (RP).

Subchapter 3: REGISTRATION HEADING: PL 1987, C. 710, §4 (RP)

§2901. REGISTRATION REQUIRED

(REPEALED)

SECTION HISTORY
1967, c. 390, §18 (AMD). 1971, c. 282, §§10,12,13 (AMD). 1977, c. 346, §1 (AMD). 1979, c. 28, §1 (AMD). 1983, c. 378, §44 (AMD). 1987, c. 710, §4 (RP).

§2902. EXAMINATION; CERTIFICATES; DISPLAY; RECIPROCITY; EXAMINATION OF ASSISTANTS

(REPEALED)

SECTION HISTORY
1965, c. 286, (AMD). 1965, c. 425, §19 (AMD). 1965, c. 513, §70 (AMD). 1967, c. 390, §19 (AMD). 1969, c. 433, §85 (AMD). 1971, c. 282, §§11-13 (AMD). 1971, c. 598, §73 (AMD). 1977, c. 346, §§2,3 (AMD). 1979, c. 28, §§2,3 (AMD). 1987, c. 710, §4 (RP).

§2903. RENEWALS; FEES

(REPEALED)

SECTION HISTORY
1967, c. 390, §20 (AMD). 1977, c. 346, §4 (AMD). 1979, c. 28, §4 (AMD). 1983, c. 378, §45 (AMD). 1987, c. 710, §4 (RP).

§2903-A. NONACTIVE RENEWAL REGISTRATION

(REPEALED)

SECTION HISTORY
1979, c. 337, (NEW). 1987, c. 710, §4 (RP).

§2904. REGISTRATION OF WHOLESALE DEALERS

(REPEALED)

SECTION HISTORY
1967, c. 390, §21 (NEW). 1987, c. 710, §4 (RP).

Subchapter 4: UNIFORM PHARMACEUTICAL PRACTICE HEADING: PL 1987, C. 710, §4 (RP)

§2911. PATIENT INFORMATION REGULATION

(REPEALED)

SECTION HISTORY
1975, c. 526, (NEW). 1987, c. 710, §4 (RP).

§2912. PATIENT PROFILE RECORD SYSTEM REGULATION

(REPEALED)

SECTION HISTORY
1975, c. 526, (NEW). 1987, c. 710, §4 (RP).

§2913. CONTINUING EDUCATION REGULATION

(REPEALED)

SECTION HISTORY
1975, c. 526, (NEW). 1987, c. 710, §4 (RP).

§2914. RULES AND REGULATIONS

(REPEALED)

SECTION HISTORY
1975, c. 526, (NEW). 1987, c. 710, §4 (RP).

Subchapter 5: SERVICES AT RURAL HEALTH CENTERS HEADING: PL 1987, C. 710, §4 (RP)

§2921. DEFINITIONS

(REPEALED)

SECTION HISTORY
1981, c. 272, (NEW). 1987, c. 710, §4 (RP).

§2922. CENTER TO BE LICENSED

(REPEALED)

SECTION HISTORY
1981, c. 272, (NEW). 1987, c. 710, §4 (RP).

§2923. SCOPE OF LICENSE

(REPEALED)

SECTION HISTORY
1981, c. 272, (NEW). 1987, c. 710, §4 (RP).

§2924. RULES

(REPEALED)

SECTION HISTORY
1981, c. 272, (NEW). 1987, c. 710, §4 (RP).

Subchapter 6: THIRD-PARTY PRESCRIPTION PROGRAM ACT HEADING: PL 1987, C. 710, §4 (RP)

§2931. SHORT TITLE

(REPEALED)

SECTION HISTORY
1983, c. 405, (NEW). 1987, c. 710, §4 (RP).

§2932. DEFINITION

(REPEALED)

SECTION HISTORY
1983, c. 405, (NEW). 1987, c. 710, §4 (RP).

§2933. NOTICE

(REPEALED)

SECTION HISTORY
1983, c. 405, (NEW). 1987, c. 710, §4 (RP).

§2934. DENIAL OF PAYMENT

(REPEALED)

SECTION HISTORY
1983, c. 405, (NEW). 1987, c. 710, §4 (RP).

§2935. REIMBURSEMENT RATES

(REPEALED)

SECTION HISTORY
1983, c. 405, (NEW). 1987, c. 710, §4 (RP).

§2936. CONTRACT RENEWAL AND CHANGES

(REPEALED)

SECTION HISTORY
1983, c. 405, (NEW). 1987, c. 710, §4 (RP).

§2937. EXCEPTIONS

(REPEALED)

SECTION HISTORY
1983, c. 405, (NEW). 1985, c. 748, §42 (AMD). 1987, c. 710, §4 (RP).

Chapter 43: PHOTOGRAPHERS

§2951. CONSTRUCTION

(REPEALED)

SECTION HISTORY
1985, c. 763, §A83 (RP).

§2952. DEFINITIONS

(REPEALED)

SECTION HISTORY
1985, c. 763, §A83 (RP).

§2953. LICENSE; APPLICATION

(REPEALED)

SECTION HISTORY
1977, c. 682, §9 (RPR). 1985, c. 763, §A83 (RP).

§2954. -- FEES

(REPEALED)

SECTION HISTORY
1977, c. 682, §9 (RPR). 1985, c. 763, §A83 (RP).

§2955. REFUSAL AND REVOCATION

(REPEALED)

SECTION HISTORY
1977, c. 682, §9 (RPR). 1977, c. 692, §3A (RPR). 1977, c. 694, §605 (RPR). 1985, c. 763, §A83 (RP).

§2956. -- EXPIRATION

(REPEALED)

SECTION HISTORY
1977, c. 682, §9 (RPR). 1985, c. 763, §A83 (RP).

§2957. SIGNATURE OF COMMISSIONER

(REPEALED)

SECTION HISTORY
1977, c. 682, §9 (RPR). 1985, c. 763, §A83 (RP).

§2958. SHOW OF LICENSE

(REPEALED)

SECTION HISTORY

1985, c. 763, §A83 (RP).

§2959. LOCAL LICENSES

(REPEALED)

SECTION HISTORY
1985, c. 763, §A83 (RP).

§2960. VIOLATIONS

(REPEALED)

SECTION HISTORY
1985, c. 763, §A83 (RP).

§2961. PENALTIES

(REPEALED)

SECTION HISTORY
1985, c. 763, §A83 (RP).

Chapter 45: PHYSICAL THERAPISTS

Subchapter 1: GENERAL PROVISIONS (HEADING: PL 1979, C. 555, §1 (RP))

§3001. DEFINITIONS

(REPEALED)

SECTION HISTORY
1967, c. 378, §1 (AMD). 1979, c. 555, §1 (RP).

§3002. LIMITATIONS TO PRACTICE

(REPEALED)

SECTION HISTORY
1967, c. 378, §2 (AMD). 1979, c. 555, §1 (RP).

Subchapter 2: BOARD OF EXAMINERS (HEADING: PL 1979, C. 555, §1 (RP))

§3051. POWERS AND DUTIES OF BOARD

(REPEALED)

SECTION HISTORY
1975, c. 575, §36 (AMD). 1979, c. 555, §1 (RP).

§3052. COMPENSATION AND EXPENSES

(REPEALED)

SECTION HISTORY
1967, c. 378, §3 (AMD). 1979, c. 555, §1 (RP).

§3053. REFUSAL TO ISSUE; DISCIPLINARY ACTION

(REPEALED)

SECTION HISTORY
1977, c. 694, §606 (RPR). 1979, c. 555, §1 (RP).

Subchapter 3: REGISTRATION (HEADING: PL 1979, C. 555, §1 (RP))

§3101. UNLAWFUL PRACTICE

(REPEALED)

SECTION HISTORY
1979, c. 555, §1 (RP).

§3102. APPLICATION; QUALIFICATIONS; EXAMINATIONS

(REPEALED)

SECTION HISTORY
1967, c. 378, §4 (AMD). 1969, c. 433, §86 (AMD). 1971, c. 598, §74 (AMD). 1979, c. 555, §1 (RP).

§3103. LICENSE WITHOUT EXAMINATION

(REPEALED)

SECTION HISTORY
1967, c. 378, §5 (RPR). 1979, c. 555, §1 (RP).

§3104. LICENSURE FOR PHYSICAL THERAPISTS TRAINED IN OTHER COUNTRIES

(REPEALED)

SECTION HISTORY
1967, c. 378, §6 (RPR). 1979, c. 555, §1 (RP).

§3105. FEES; REEXAMINATION

(REPEALED)

SECTION HISTORY
1967, c. 378, §7 (AMD). 1979, c. 555, §1 (RP).

§3106. CERTIFICATE TO PRACTICE

(REPEALED)

SECTION HISTORY
1979, c. 555, §1 (RP).

§3107. RENEWALS; FEES

(REPEALED)

SECTION HISTORY
1967, c. 378, §8 (AMD). 1979, c. 555, §1 (RP).

§3108. CERTIFICATION OF PHYSICAL THERAPY AIDES

(REPEALED)

SECTION HISTORY
1967, c. 378, §9 (NEW). 1979, c. 555, §1 (RP).

Chapter 45-A: PHYSICAL THERAPIST PRACTICE ACT

§3111. DEFINITIONS

As used in this chapter, unless the context indicates otherwise, the following terms shall have the following meanings. [1979, c. 555, §2 (NEW).]

1. **Board.** "Board" means the Board of Examiners in Physical Therapy as created in section 3112.

[1979, c. 555, §2 (NEW) .]

2. **Direction.** "Direction" means continuing verbal and written contact by a physical therapist with a physical therapist assistant including periodic on-site supervision adequate to ensure the safety and welfare of the patient.

[1979, c. 555, §2 (NEW) .]

3. **Physical therapist.** "Physical therapist" means a person who practices physical therapy.

[1979, c. 555, §2 (NEW) .]

4. **Physical therapist assistant.** "Physical therapist assistant" means a person who assists in the practice of physical therapy.

[1979, c. 555, §2 (NEW) .]

5. **Physical therapy.** "Physical therapy" is the practice the scope of which is set forth in section 3111-A.

[2007, c. 402, Pt. N, §1 (AMD) .]

6. **Practice of physical therapy.** "Practice of physical therapy" means the rendering or offering to render any service involving physical therapy for a fee, salary or other compensation, monetary or otherwise, paid directly or indirectly.

[1979, c. 555, §2 (NEW) .]

7. **Referral.** "Referral" means the request of a doctor of medicine, surgery, osteopathy, podiatry or dentistry to a physical therapist to accept one of his patients for treatment.

[1983, c. 468, §9 (AMD) .]

SECTION HISTORY
1979, c. 555, §2 (NEW). 1983, c. 468, §9 (AMD). 2007, c. 402, Pt. N, §1 (AMD).

§3111-A. SCOPE OF PRACTICE

The practice of physical therapy includes the evaluation, treatment and instruction of human beings to detect, assess, prevent, correct, alleviate and limit physical disability, bodily malfunction and pain from injury, disease and any other bodily condition; the administration, interpretation and evaluation of tests and measurements of bodily functions and structures for the purpose of treatment planning; the planning, administration, evaluation and modification of treatment and instruction; and the use of physical agents and

procedures, activities and devices for preventive and therapeutic purposes; and the provision of consultative, educational and other advisory services for the purpose of reducing the incidence and severity of physical disability, bodily malfunction and pain. [2007, c. 402, Pt. N, §2 (NEW).]

SECTION HISTORY
2007, c. 402, Pt. N, §2 (NEW).

§3112. BOARD CREATED; APPOINTMENT; POWERS AND DUTIES

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 4 physical therapists and one public member as defined in Title 5, section 12004-A. [2007, c. 621, §7 (AMD).]

1. **Appointment.** Members of the board are appointed by the Governor for a term of 4 years. Appointments of members must comply with Title 10, section 8009.

A member of the board may be removed from office for cause by the Governor.

[2007, c. 402, Pt. N, §3 (AMD) .]

2. **Meetings; chair.** 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.

[2013, c. 246, Pt. B, §9 (AMD) .]

3. **Officers.**

[2007, c. 402, Pt. N, §3 (RP) .]

4. **Quorum.**

[2007, c. 402, Pt. N, §3 (RP) .]

5. **Powers and duties.** The board has the following powers and duties:

A. To review the qualifications of applicants for licensure and to license physical therapists and physical therapist assistants who qualify under this chapter; [1979, c. 555, §2 (NEW).]

B. To approve physical therapist and physical therapist assistant examinations and to establish passing standards; and [2007, c. 402, Pt. N, §3 (AMD).]

C. To adopt rules in accordance with this chapter necessary for the enforcement of its authority and performance of its duties consistent with the provisions of Title 5, chapter 375. [2007, c. 402, Pt. N, §3 (AMD).]

D. [2003, c. 250, Pt. A, §1 (RP).]

E. [2007, c. 402, Pt. N, §3 (RP).]

F. [2007, c. 402, Pt. N, §3 (RP).]

G. [2007, c. 402, Pt. N, §3 (RP).]

H. [2007, c. 402, Pt. N, §3 (RP).]

I. [2007, c. 402, Pt. N, §3 (RP).]

J. [1995, c. 397, §51 (RP).]

K. [1995, c. 397, §52 (RP).]

[2007, c. 402, Pt. N, §3 (AMD) .]

SECTION HISTORY
1979, c. 555, §2 (NEW). 1981, c. 501, §61 (AMD). 1983, c. 413, §§126-131 (AMD). 1983, c. 553, §46 (AMD). 1983, c. 812, §§226,227 (AMD). 1985, c. 785, §B137 (AMD). 1989, c. 503, §B138 (AMD). 1993, c. 600, §A196 (AMD). 1995, c. 397, §§49-52 (AMD). 1999, c. 386, §K1 (AMD). 2003, c. 250, §A1 (AMD). 2007, c. 402, Pt. N, §3 (AMD). 2007, c. 621, §7 (AMD). 2013, c. 246, Pt. B, §9 (AMD).

§3113. LICENSE REQUIRED; LIMITATIONS AND EXCEPTIONS

(REPEALED)

SECTION HISTORY
1979, c. 555, §2 (NEW). 1983, c. 468, §10 (AMD). 1991, c. 178, §2 (RP).

§3113-A. LICENSE REQUIRED; LIMITATIONS AND EXCEPTIONS

A person may not practice or profess to be authorized to practice as a physical therapist in this State or use the words "physical therapist" or the letters "P.T." or other words or letters to indicate that the person using those words or letters is a licensed physical therapist unless that person is licensed in accordance with the provisions of this chapter. [1991, c. 178, §3 (NEW).]

After one year from the effective date of this chapter, a person may not act or profess to be able to act as a physical therapist assistant in this State or use the words "physical therapist assistant" or the letters "P.T.A." or other words or letters to indicate that the person using those words or letters is a licensed physical therapist assistant unless that person is licensed in accordance with the provisions of this chapter. [1991, c. 178, §3 (NEW).]

Nothing in this chapter may be construed as authorizing a physical therapist or physical therapist assistant, licensed or not licensed, to practice medicine, osteopathy, dentistry, chiropractic or any other form of healing, except that physical therapists may utilize manipulative techniques if practiced within the scope of their profession. Physical therapists may not apply manipulative thrust to the vertebrae of the spine except upon consultation with, and referral by, a duly licensed doctor of medicine, surgery, chiropractic or osteopathy. A licensed physical therapist or physical therapist assistant may not administer drugs except upon the referral of a duly licensed doctor of medicine, surgery, osteopathy, podiatry or dentistry, and may not use roentgen rays or radium or use electricity for surgical purposes. A licensed physical therapist assistant may act only under the direction of a physical therapist licensed to practice in this State. [1991, c. 178, §3 (NEW).]

When treating a patient without referral from a doctor of medicine, osteopathy, podiatry, dentistry or chiropractic, the physical therapist or physical therapist assistant is subject to the following requirements. [1991, c. 178, §3 (NEW).]

1. No medical diagnosis. A physical therapist or physical therapist assistant may not make a medical diagnosis. The physical therapist or physical therapist assistant shall refer to a licensed doctor of medicine, osteopathy, podiatry, dentistry or chiropractic a patient whose physical condition, either at the initial evaluation or during subsequent treatment, the physical therapist or physical therapist assistant determines to be beyond the scope of the practice of the physical therapist or physical therapist assistant.

[1991, c. 178, §3 (NEW) .]

2. **No improvement.** If no improvement in the patient is documented by the physical therapist or physical therapist assistant within 30 days of initiation of treatment, the physical therapist or physical therapist assistant shall refer the patient to a licensed doctor of medicine, osteopathy, podiatry, dentistry or chiropractic.

[1991, c. 178, §3 (NEW) .]

3. **Length of treatment.** For treatment required beyond 120 days, the physical therapist or physical therapist assistant shall consult with, or refer the patient to, a licensed doctor of medicine, surgery, osteopathy, podiatry, dentistry or chiropractic. The physical therapist or physical therapist assistant shall document the action taken.

[1991, c. 178, §3 (NEW) .]

An employer is not liable under Title 39-A, section 206 for charges for services of a physical therapist or physical therapist assistant unless the employee has been referred to that practitioner by a licensed doctor of medicine, surgery, osteopathy, chiropractic, podiatry or dentistry. [1991, c. 885, Pt. E, §41 (AMD); 1991, c. 885, Pt. E, §47 (AFF).]

SECTION HISTORY
1991, c. 178, §3 (NEW). 1991, c. 885, §E41 (AMD). 1991, c. 885, §E47 (AFF).

§3113-B. EXEMPTIONS

Nothing in this chapter prohibits: [1991, c. 178, §3 (NEW).]

1. **Engaging in licensed practice.** Any person licensed in this State under any other provision of law from engaging in the practice for which that person is licensed;

[1991, c. 178, §3 (NEW) .]

2. **Federal officials.** Any person serving in the United States Armed Services or public health service or employed by the Veterans' Administration or other federal agency from performing that person's official duties, provided the duties are limited to that service or employment;

[1991, c. 178, §3 (NEW) .]

3. **Persons employed by licensed doctors.** Any person employed by and under the control of a duly licensed doctor in that doctor's office from administering physical therapy modalities, providing that person does not profess to be a physical therapist or physical therapist assistant or use words or letters to indicate that the person is a licensed physical therapist or physical therapist assistant;

[1991, c. 178, §3 (NEW) .]

4. **Graduate physical therapist or assistant.** The supervised practice of a graduate physical therapist or graduate physical therapist assistant, who is approved by the board to sit for examination, until 60 days after the publication of examination results. The graduate must work in a facility employing at least one physical therapist licensed to practice in this State who assumes responsibility for patient-related activities of the applicant;

[2013, c. 217, Pt. E, §1 (AMD) .]

5. **Student physical therapist or assistant.** The supervised practice of physical therapy by a student enrolled in an accredited physical therapist or physical therapist assistant program who indicates that that person is a "student"; or

[1991, c. 178, §3 (NEW) .]

6. **Delegation to aides or assistants.** Any physical therapist licensed pursuant to this chapter from delegating to a physical therapy aide or licensed physical therapist assistant treatment procedures or patient-related activities commensurate with the education and training of the person, but not including interpretation of referrals, performance or evaluation procedures or determination and modification of patient treatment programs. The board shall adopt rules governing supervision of physical therapy aides and licensed physical therapist assistants.

[1991, c. 178, §3 (NEW) .]

SECTION HISTORY
1991, c. 178, §3 (NEW). 1999, c. 386, §K2 (AMD). 2007, c. 402, Pt. N, §4 (AMD). 2013, c. 217, Pt. E, §1 (AMD).

§3114. APPLICATION; QUALIFICATION; LICENSURE BY EXAMINATION *(REPEALED)*

SECTION HISTORY
1979, c. 555, §2 (NEW). 1981, c. 501, §62 (RP).

§3114-A. QUALIFICATION; APPLICATION

1. **Qualification.** To qualify for a license as a physical therapist or physical therapist assistant, an applicant must meet the following requirements:

A. Demonstrate that the applicant is trustworthy and competent to engage in practice as a physical therapist or physical therapist assistant in such manner as to safeguard the interests of the public; [1999, c. 386, Pt. K, §3 (AMD).]

B. Be a graduate of an educational program for the physical therapist or the physical therapist assistant that is accredited by an agency recognized by the United States Commissioner of Education or the Council on Post-Secondary Accreditation, or both, and approved by the board; or if the applicant has been trained in another country, present satisfactory evidence that the applicant has graduated from a school of physical therapy approved or accredited in the country where the school is located and have educational credentials equivalent to those of the United States trained physical therapist or physical therapist assistant; and [1999, c. 386, Pt. K, §3 (AMD).]

C. Pass an examination, approved by the board, to determine the applicant's fitness to practice as a physical therapist or to act as a physical therapist assistant. [2007, c. 402, Pt. N, §5 (AMD).]

Applicants trained in another country must demonstrate proficiency in written and spoken English.

[2007, c. 402, Pt. N, §5 (AMD) .]

2. **Application.** To qualify for examination or to apply for a license as a physical therapist or physical therapist assistant, an applicant shall:

A. Submit an application with supporting documents to the board on forms provided by the board; and [2013, c. 217, Pt. E, §2 (AMD).]

B. Pay a required fee as set under section 3116-A. [2013, c. 217, Pt. E, §2 (AMD).]

C. [1983, c. 413, §135 (RP).]

[2013, c. 217, Pt. E, §2 (AMD) .]

SECTION HISTORY
1981, c. 501, §63 (NEW). 1983, c. 413, §§132-135 (AMD). 1999, c. 386, §§K3,4 (AMD). 2003, c. 250, §A2 (AMD). 2007, c. 402, Pt. N, §5 (AMD). 2013, c. 217, Pt. E, §2 (AMD).

§3114-B. ENDORSEMENT

The board may waive the examination requirement for an applicant who is currently licensed in another state or other jurisdiction by virtue of having previously passed a qualifying examination acceptable to the board, if the passing standards for the examination are equivalent to those then required by the law of this State. [2007, c. 402, Pt. N, §6 (NEW).]

SECTION HISTORY
2007, c. 402, Pt. N, §6 (NEW).

§3115. LICENSURE

The board shall license an applicant who meets the requirements of this chapter and pays the biennial licensure fee as set under section 3116-A. Licensure as a physical therapist entitles the person to whom it is granted to engage in the practice of physical therapy anywhere in this State and to use the words "physical therapist" or letters "P.T." to indicate that the person is licensed in this State. Licensure as a physical therapist assistant entitles the person to whom it is granted to act as a physical therapist assistant and to use the words "physical therapist assistant" or letters "P.T.A." to indicate that the person is licensed in this State. [2009, c. 112, Pt. A, §8 (AMD).]

SECTION HISTORY
1979, c. 555, §2 (NEW). 1981, c. 501, §64 (RPR). 1983, c. 413, §136 (AMD). 2003, c. 250, §A3 (AMD). 2007, c. 402, Pt. N, §7 (AMD). 2009, c. 112, Pt. A, §8 (AMD).

§3116. LICENSE RENEWAL

All licenses must be renewed biennially on or before March 31st of each even-numbered year or at such other times as the Commissioner of Professional and Financial Regulation may designate upon application by the licensee accompanied by the renewal fee as set under section 3116-A. Any license not renewed by March 31st automatically expires. The board may renew an expired license if the renewal notice is returned within 90 days of the expiration date and upon payment of a late fee in addition to the renewal fee as set under section 3116-A. A person who submits an application for renewal more than 90 days after the license expiration date 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 the renewal application is made within 2 years from the date of that expiration. [2007, c. 402, Pt. N, §8 (AMD).]

SECTION HISTORY
1979, c. 555, §2 (NEW). 1981, c. 501, §65 (AMD). 1983, c. 204, §9 (AMD). 1983, c. 413, §137 (RPR). 1999, c. 386, §K5 (AMD). 2003, c. 250, §A4 (AMD). 2007, c. 402, Pt. N, §8 (AMD).

§3116-A. FEES

The Director of the Office of Professional and Occupational Regulation within the Department of Professional and Financial Regulation may establish by rule fees for purposes authorized under this chapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for any one purpose may not exceed $100 biennially. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2003, c. 250, Pt. A, §5 (NEW); 2011, c. 286, Pt. B, §5 (REV).]

SECTION HISTORY
2003, c. 250, §A5 (NEW). 2011, c. 286, Pt. B, §5 (REV).

§3117. REVOCATION AND REISSUANCE

(REPEALED)

SECTION HISTORY
1979, c. 555, §2 (NEW). 1983, c. 413, §138 (RP).

§3117-A. DENIAL OR REFUSAL TO RENEW LICENSE; DISCIPLINARY ACTION

In addition to the grounds enumerated in Title 10, section 8003, subsection 5-A, paragraph A, the board may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A for any of the following reasons: [2007, c. 402, Pt. N, §9 (NEW).]

1. **Fraud.**

[2007, c. 402, Pt. N, §9 (RP) .]

2. **Addiction.** Addiction, as confirmed by medical findings, to the use of alcohol or other drugs, that has resulted in the licensed physical therapist or physical therapist assistant being unable to perform the licensed physical therapist's or physical therapist assistant's duties or perform those duties in a manner that would not endanger the health or safety of the patients to be served; or

[2007, c. 402, Pt. N, §9 (AMD) .]

3. **Incompetency.** A medical finding of mental incompetency.

[2007, c. 402, Pt. N, §9 (AMD) .]

4. **Accomplice.**

[2007, c. 402, Pt. N, §9 (RP) .]

5. **Misconduct.**

[2007, c. 402, Pt. N, §9 (RP) .]

6. **Criminal conviction.**

[2007, c. 402, Pt. N, §9 (RP) .]

7. Violation.

[2007, c. 402, Pt. N, §9 (RP) .]

SECTION HISTORY
1983, c. 413, §139 (NEW). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2003, c. 204, §D1 (AMD). 2007, c. 402, Pt. N, §9 (AMD).

§3118. UNLICENSED PRACTICE

Any person who violates section 3113-A is subject to the provisions of Title 10, section 8003-C.
[2007, c. 402, Pt. N, §10 (NEW).]

SECTION HISTORY
1983, c. 413, §139 (NEW). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 402, Pt. N, §10 (RPR).

§3119. RECEIPTS AND DISBURSEMENTS

(REPEALED)

SECTION HISTORY
1985, c. 389, §15 (NEW). 1995, c. 397, §53 (RP).

Chapter 47: PHYSICIANS AND SURGEONS [REPEALED]

Subchapter 1: GENERAL PROVISIONS

§3151.

(REPEALED)

SECTION HISTORY
1971, c. 591, §2 (RP).

§3152.

(REPEALED)

SECTION HISTORY
1969, c. 329, §1 (RP).

§3153.

(REPEALED)

SECTION HISTORY
1969, c. 297, (NEW). 1969, c. 378, (NEW). 1969, c. 590, §61 (RP).
1971, c. 591, §2 (RP).

§3154.

(REPEALED)

SECTION HISTORY
1969, c. 590, §62 (NEW). 1971, c. 237, §3 (AMD). 1971, c. 591, §2 (RP).

§3155.

(REPEALED)

SECTION HISTORY
1971, c. 361, (NEW). 1971, c. 591, §2 (RP).

Subchapter 2: BOARD OF REGISTRATION

§3201.

(REPEALED)

SECTION HISTORY
1965, c. 251, §1 (AMD). 1971, c. 591, §2 (RP).

§3201-A.

(REPEALED)

SECTION HISTORY
1965, c. 251, §2 (NEW). 1971, c. 591, §2 (RP).

§3201-B.

(REPEALED)

SECTION HISTORY
1965, c. 251, §2 (NEW). 1971, c. 591, §2 (RP).

§3202.

(REPEALED)

SECTION HISTORY
1971, c. 591, §2 (RP).

§3202-A.

(REPEALED)

SECTION HISTORY
1965, c. 251, §3 (NEW). 1971, c. 591, §2 (RP).

§3202-B.

(REPEALED)

SECTION HISTORY
1965, c. 251, §3 (NEW). 1971, c. 591, §2 (RP).

§3203.

(REPEALED)

SECTION HISTORY
1965, c. 251, §4 (RPR). 1969, c. 329, §2 (AMD). 1971, c. 591, §2 (RP).

§3203-A.

(REPEALED)

SECTION HISTORY
1965, c. 251, §5 (NEW). 1971, c. 591, §2 (RP).

§3203-B.

(REPEALED)

SECTION HISTORY
1965, c. 251, §5 (NEW). 1971, c. 591, §2 (RP).

§3203-C.

(REPEALED)

SECTION HISTORY
1965, c. 251, §5 (NEW). 1971, c. 591, §2 (RP).

§3203-D.

(REPEALED)

SECTION HISTORY
1965, c. 251, §5 (NEW). 1971, c. 591, §2 (RP).

§3203-E.

(REPEALED)

SECTION HISTORY
1965, c. 251, §5 (NEW). 1971, c. 591, §2 (RP).

§3204.

(REPEALED)

SECTION HISTORY
1971, c. 591, §2 (RP).

Subchapter 3: REGISTRATION

§3251.

(REPEALED)

SECTION HISTORY
1971, c. 591, §2 (RP).

§3252.

(REPEALED)

SECTION HISTORY
1969, c. 433, §87 (AMD). 1971, c. 591, §2 (RP). 1971, c. 598, §75 (AMD). 1971, c. 622, §117A (RP).

§3253.

(REPEALED)

SECTION HISTORY
1971, c. 591, §2 (RP).

§3254.

(REPEALED)

SECTION HISTORY
1971, c. 591, §2 (RP).

§3255.

(REPEALED)

SECTION HISTORY
1965, c. 251, §6 (AMD). 1971, c. 591, §2 (RP).

§3256.

(REPEALED)

SECTION HISTORY
1971, c. 591, §2 (RP).

§3257.

(REPEALED)

SECTION HISTORY
1965, c. 251, §7 (RPR). 1971, c. 591, §2 (RP).

§3258.

(REPEALED)

SECTION HISTORY
1971, c. 591, §2 (RP).

§3259.

(REPEALED)

SECTION HISTORY
1971, c. 591, §2 (RP).

§3259-A.

(REPEALED)

SECTION HISTORY
1965, c. 251, §8 (NEW). 1971, c. 591, §2 (RP).

§3260.

(REPEALED)

SECTION HISTORY
1971, c. 591, §2 (RP).

§3261.

(REPEALED)

SECTION HISTORY
1965, c. 251, §9 (NEW). 1971, c. 591, §2 (RP).

§3262.

(REPEALED)

SECTION HISTORY
1965, c. 251, §9 (NEW). 1971, c. 591, §2 (RP).

Chapter 48: BOARD OF LICENSURE IN MEDICINE

Subchapter 1: BOARD OF LICENSURE
HEADING: PL 1993, C. 600, PT. A, §197 (RPR)

§3263. APPOINTMENT; VACANCIES; COMPENSATION

The Board of Licensure in Medicine, as established by Title 5, section 12004-A, subsection 24, and in this chapter called the "board," consists of 10 individuals who are residents of this State, appointed by the Governor. Three individuals must be representatives of the public. Six individuals must be graduates of a legally chartered medical college or university having authority to confer degrees in medicine and must have been actively engaged in the practice of their profession in this State for a continuous period of 5 years preceding their appointments to the board. One individual must be a physician assistant licensed under this chapter who has been actively engaged in the practice of that individual's profession in this State for a continuous period of 5 years preceding appointment to the board. A full-term appointment is for 6 years. Appointment of members must comply with Title 10, section 8009. A member of the board may be removed from office for cause by the Governor. [2013, c. 101, §5 (AMD).]

Members of said board shall be compensated according to the provisions of Title 5, chapter 379. If the fees to be collected under any of the provisions of this chapter are insufficient to pay the salaries and expenses provided by this section, the members of said board shall be entitled to only a pro rata payment for salary in any years in which such fees are insufficient. [1983, c. 812, §228 (AMD).]

SECTION HISTORY
1971, c. 591, §1 (NEW). 1975, c. 575, §37 (AMD). 1975, c. 771, §§360,361 (AMD). 1977, c. 388, §1 (AMD). 1983, c. 176, §16 (AMD). 1983, c. 812, §228 (AMD). 1989, c. 462, §9 (AMD). 1989, c. 503, §B139 (AMD). 1989, c. 878, §A95 (AMD). 1993, c. 600, §A198 (AMD). 1997, c. 680, §C1 (AMD). 2007, c. 695, Pt. B, §11 (AMD). 2013, c. 101, §5 (AMD).

§3264. OATH

Each member of the board shall, before entering upon the duties of the member's office, take the constitutional oath of office, and shall, in addition, make oath that the member is qualified under the terms of this chapter to hold the office. [1993, c. 600, Pt. A, §199 (AMD).]

SECTION HISTORY
1971, c. 591, §1 (NEW). 1993, c. 600, §A199 (AMD).

§3265. SECRETARY-TREASURER; BONDING

(REPEALED)

SECTION HISTORY
1971, c. 591, §1 (NEW). 1993, c. 600, §A200 (RP).

§3266. ELECTIONS; MEETINGS; SEAL; EXPENSES

The members of the board shall meet on the 2nd Tuesday of July of the uneven-numbered years at the time and place the board may determine and shall elect a chair and a secretary who shall hold their respective offices for the term of 2 years. The secretary of the board shall perform such duties as delegated by the board, including license application review functions. The board through its executive director shall receive all fees, charges and assessments payable to the board and account for and pay over the same according to law. The

board shall hold regular meetings, one in March, one in July and one in November of each year, and any additional meetings at other times and places as it may determine. The board shall cause a seal to be engraved and shall keep a record of all their proceedings. [2003, c. 601, §2 (AMD).]

SECTION HISTORY
1971, c. 591, §1 (NEW). 1993, c. 600, §A201 (AMD). 2003, c. 601, §2 (AMD).

§3267. QUORUM

A majority of the members of the board constitutes a quorum for the transaction of business under this chapter, but a less number may adjourn from time to time until a quorum is present. [1993, c. 600, Pt. A, §201 (AMD).]

SECTION HISTORY
1971, c. 591, §1 (NEW). 1993, c. 600, §A201 (AMD).

§3268. MEMBERS MAY ADMINISTER OATHS

A member of the board has the authority to administer oaths, compel the testimony of witnesses and compel the production of books, records and documents relevant to inquiry pursuant to a subpoena issued in accordance with section 3269. [1993, c. 600, Pt. A, §201 (AMD).]

SECTION HISTORY
1971, c. 591, §1 (NEW). 1993, c. 600, §A201 (AMD).

§3269. POWERS AND DUTIES OF THE BOARD

The board has the following powers and duties in addition to all other powers and duties imposed by this chapter: [1993, c. 600, Pt. A, §202 (AMD).]

1. **Set standards.** The power to set standards of eligibility for examination for candidates desiring admission to medical practice in Maine;

[1971, c. 591, §1 (NEW) .]

2. **Adopt criteria.** The power to design or adopt an examination and other suitable criteria for establishing a candidate's knowledge in medicine and its related skills;

[1971, c. 591, §1 (NEW) .]

3. **Licensing and standards.** The power to license and to set standards of practice for physicians and surgeons practicing medicine in Maine;

[1993, c. 600, Pt. A, §202 (AMD) .]

4. **Hearings and procedure.** The power to hold hearings and take evidence in all matters relating to the exercise and performance of the powers and duties vested in the board and the board, acting through the secretary, has the authority to subpoena witnesses, books, records and documents in hearings before it;

[1993, c. 600, Pt. A, §202 (AMD) .]

5. **Legal representation.** The power to engage legal counsel, to be approved by the Attorney General, and investigative assistants of its own choosing to advise the board generally and specifically, to represent the board in hearings before it and in appeals taken from a decision of the board;

[1993, c. 600, Pt. A, §202 (AMD) .]

6. **Salary and duties.** Except as provided in subsections 15 and 16, the power to employ and prescribe the duties of other personnel as the board determines necessary. Except as prescribed in subsection 15, the appointment and compensation of that staff is subject to the Civil Service Law;

[1993, c. 600, Pt. A, §202 (AMD) .]

7. **Rules.** The power to adopt rules as the board determines necessary and proper to carry out this chapter;

[1993, c. 600, Pt. A, §202 (AMD) .]

8. **Complaints.** The duty to investigate complaints in a timely fashion on its own motion and those lodged with the board or its representatives regarding the violation of a section of this chapter and the violation of rules adopted by the board pursuant to its authority;

[1993, c. 600, Pt. A, §202 (AMD) .]

8-A. **Report.** By March 1st of each year, the board shall submit to the Legislature a report consisting of statistics on the following for the preceding year:

A. The number of complaints against licensees received from the public or filed on the board's own motion; [1989, c. 462, §11 (NEW).]

B. The number of complaints dismissed for lack of merit or insufficient evidence of grounds for discipline; [1989, c. 462, §11 (NEW).]

C. The number of cases in process of investigation or hearing carried over at year end; and [1989, c. 462, §11 (NEW).]

D. The number of disciplinary actions finalized during the report year as tabulated and categorized by the annual statistical summary of the Physician Data Base of the Federation of State Medical Boards of the United States, Inc.; [1993, c. 600, Pt. A, §202 (AMD).]

[1993, c. 600, Pt. A, §202 (AMD) .]

9. **Open financial records.** The duty to keep a record of the names and residences of all individuals licensed under this chapter and a record of all money received and disbursed by the board, and records or duplicates must always be open to inspection in the office of the secretary during regular office hours. The board shall annually make a report to the Commissioner of Professional and Financial Regulation and to the Legislature containing a full and complete account of all its official acts during the preceding year, and a statement of its receipts and disbursements and comments or suggestions as the board determines essential;

[1993, c. 600, Pt. A, §202 (AMD) .]

10. **Powers.** The power to mandate, conduct and operate or contract with other agencies, individuals, firms or associations for the conduct and operation of programs of medical education, including statewide programs of health education for the general public and to disburse funds accumulated through the receipt of licensure fees for this purpose, provided that funds may not be disbursed for this purpose for out-of-state travel, meals or lodging for a physician being educated under this program. The power to conduct and operate or contract with other agencies or nonprofit organizations for the conduct and operation of a program of

financial assistance to medical students indicating an intent to engage in family practice in rural Maine, under which program the students may be provided with interest-free grants or interest-bearing loans in an amount not to exceed $5,000 per student per year on terms and conditions as the board may determine.

Notwithstanding any other provision of this subsection, if the board contracts with the Commissioner of Education to provide funds for the costs of positions for which the State has contracted at the University of Vermont College of Medicine, or the Tufts University School of Medicine, the terms of the contract between the board and the commissioner must be in accordance with the requirements of Title 20-A, chapter 421;

[1993, c. 600, Pt. A, §202 (AMD) .]

11. **Conduct examinations.** The power to conduct examinations in medicine;

[1993, c. 600, Pt. A, §202 (AMD) .]

12. **Other services and functions.** The power to provide services and carry out functions necessary to fulfill the board's statutory responsibilities. The board may set reasonable fees for services such as providing license certification and verifications, providing copies of board law and rules, and providing copies of documents. The board may also set reasonable fees to defray its cost in administering examinations for special purposes that it may from time to time require and for admitting courtesy candidates from other states to its examinations;

[1991, c. 425, §11 (AMD) .]

13. **Liaison; limitation.**

[1995, c. 462, Pt. B, §6 (RP) .]

14. **Budget.** The duty to submit to the Commissioner of Professional and Financial Regulation its budgetary requirements in the same manner as is provided in Title 5, section 1665, and the commissioner shall in turn transmit these requirements to the Bureau of the Budget without revision, alteration or change, unless alterations are mutually agreed upon by the department and the board or the board's designee;

[1995, c. 462, Pt. B, §7 (RPR) .]

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 is sufficient, if approved, to provide for adequate legal and investigative personnel on the board's staff and that of the Attorney General to 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;

[2001, c. 260, Pt. H, §1 (AMD) .]

16. **Executive director.** The power 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

[2001, c. 260, Pt. H, §2 (AMD) .]

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. Licensing decisions made by staff may be appealed to the full board.

[2001, c. 260, Pt. H, §3 (NEW) .]

The Commissioner of Professional and Financial Regulation acts as a liaison between the board and the Governor. [1995, c. 462, Pt. B, §8 (NEW).]

The Commissioner of Professional and Financial Regulation does not have the authority to exercise or interfere with the exercise of discretionary, regulatory or licensing authority granted by statute to the board. The commissioner may require the board to be accessible to the public for complaints and questions during regular business hours and to provide any information the commissioner requires in order to ensure that the board is operating administratively within the requirements of this chapter. [1995, c. 462, Pt. B, §8 (NEW).]

SECTION HISTORY
1971, c. 591, §1 (NEW). 1975, c. 404, §1 (AMD). 1975, c. 504, (AMD). 1977, c. 388, §2 (AMD). 1977, c. 451, (AMD). 1977, c. 604, §§28,29 (AMD). 1979, c. 345, §1 (AMD). 1981, c. 239, (AMD). 1985, c. 748, §42 (AMD). 1985, c. 804, §§19,22 (AMD). 1987, c. 178, §§2,3 (AMD). 1989, c. 462, §§10-12 (AMD). 1989, c. 700, §A147 (AMD). 1991, c. 425, §11 (AMD). 1993, c. 600, §A202 (AMD). 1993, c. 659, §§B14,15 (AMD). 1995, c. 462, §§B6-8 (AMD). 1997, c. 680, §C2 (AMD). 2001, c. 260, §§H1-3 (AMD).

Subchapter 2: LICENSURE HEADING: PL 1993, C. 600, PT. A, §203 (RPR)

§3270. LICENSURE REQUIRED

Unless licensed by the board, an individual may not practice medicine or surgery or a branch of medicine or surgery or claim to be legally licensed to practice medicine or surgery or a branch of medicine or surgery within the State by diagnosing, relieving in any degree or curing, or professing or attempting to diagnose, relieve or cure a human disease, ailment, defect or complaint, whether physical or mental, or of physical and mental origin, by attendance or by advice, or by prescribing or furnishing a drug, medicine, appliance, manipulation, method or a therapeutic agent whatsoever or in any other manner unless otherwise provided by statutes of this State. An individual licensed under chapter 36 may prefix the title "Doctor" or the letters "Dr." to that individual's name, as provided in section 2581, or a chiropractor licensed by this State may prefix the title "Doctor" or the letters "Dr." to that individual's name when accompanied by the word "Chiropractor," or a dentist duly licensed by this State may prefix the title "Doctor" or the letters "Dr." to that individual's name or a naturopathic doctor licensed by this State may prefix the title "Doctor" or the letters "Dr." to that individual's name when accompanied by the word "Naturopathy" or the words "Naturopathic Medicine" or an optometrist duly licensed under the laws of this State may prefix the title "Doctor" or the letters "Dr." to that individual's name when accompanied by the word "Optometrist" or a podiatrist licensed under the laws of this State may prefix the title "Doctor" or the letters "Dr." to that individual's name when accompanied by the word "Podiatrist" or "Chiropodist." [1995, c. 671, §11 (AMD).]

Whoever, not being duly licensed by the board, practices medicine or surgery or a branch of medicine or surgery, or purports to practice medicine or surgery or a branch of medicine or surgery in a way cited in this section, or who uses the title "Doctor" or the letters "Dr." or the letters "M.D." in connection with that individual's name, contrary to this section, commits a Class E crime. The prefixing of the title "Doctor" or the letters "Dr." or the appending of the letters "M.D." by an individual to that individual's name or the use of the title of doctor or physician in any way by an individual not licensed as described is prima facie evidence that that individual is purporting to practice medicine or surgery contrary to this section, except that nothing contained in this section prevents an individual who has received the doctor's degree from a reputable college or university, other than the degree of "Doctor of Medicine" from prefixing the letters "Dr." to that individual's name, if that individual is not engaged, and does not engage, in the practice of medicine or surgery or the treatment of a disease or human ailment. Nothing in this chapter may be construed as to affect or prevent the practice of the religious tenets of a church in the ministration to the sick or suffering by mental or spiritual means. [1993, c. 600, Pt. A, §204 (AMD).]

All fees set in this chapter are nonrefundable application fees or administrative processing fees payable to the board at the time of application or at the time board action is requested. Unless otherwise specified, the board shall set the fees. [1991, c. 425, §12 (NEW).]

SECTION HISTORY
1971, c. 591, §1 (NEW). 1973, c. 788, §161 (AMD). 1991, c. 425, §12 (AMD). 1991, c. 797, §17 (AMD). 1993, c. 600, §A204 (AMD). 1995, c. 671, §11 (AMD).

§3270-A. ASSISTANTS

This chapter may not be construed to prohibit an individual from rendering medical services if these services are rendered under the supervision and control of a physician or surgeon and if that individual has satisfactorily completed a training program approved by the Board of Licensure in Medicine and a competency examination determined by this board. Supervision and control may not be construed as requiring the personal presence of the supervising and controlling physician at the place where these services are rendered, unless a physical presence is necessary to provide patient care of the same quality as provided by the physician. This chapter may not be construed as prohibiting a physician or surgeon from delegating to the physician's or surgeon's employees or support staff certain activities relating to medical care and treatment carried out by custom and usage when the activities are under the control of the physician or surgeon. The physician delegating these activities to employees or support staff, to program graduates or to participants in an approved training program is legally liable for the activities of those individuals, and any individual in this relationship is considered the physician's agent. This section may not be construed to apply to registered nurses acting pursuant to chapter 31. [2013, c. 33, §2 (AMD).]

When the delegated activities are part of the practice of optometry as defined in chapter 34-A, then the individual to whom these activities are delegated must possess a valid license to practice optometry in Maine, or otherwise may perform only as a technician within the established office of a physician, and otherwise acting solely on the order of and under the responsibility of a physician skilled in the treatment of eyes as designated by the proper professional board, and without assuming evaluation or interpretation of examination findings by prescribing corrective procedures to preserve, restore or improve vision. [1993, c. 600, Pt. A, §205 (AMD).]

SECTION HISTORY
1973, c. 514, §2 (NEW). 1975, c. 404, §2 (AMD). 1977, c. 78, §181 (AMD). 1993, c. 600, §A205 (AMD). 1999, c. 159, §1 (AMD). 2013, c. 33, §2 (AMD).

§3270-B. LICENSE AND REGULATION

A physician assistant is not permitted to practice until the physician assistant has applied for and obtained a license issued by the Board of Licensure in Medicine, which must be renewed biennially, and a certificate of registration. All applications for certificate of registration must be accompanied by an application by the proposed supervisory physician that must contain a statement that that physician is responsible for all medical activities of the physician assistant. A physician assistant may delegate medical acts to a medical assistant employed by the physician assistant or by an employer of the physician assistant as long as that delegation is permitted in the plan of supervision established by the physician assistant and the supervisory physician. The Board of Licensure in Medicine is authorized to adopt rules regarding the training and licensure of physician assistants and the agency relationship between the physician assistant and the supervising physician. Those rules, which must be adopted jointly with the Board of Osteopathic Licensure, may pertain, but are not limited, to the following matters: [2013, c. 101, §6 (AMD).]

1. **Application information.** The information to be contained in the application for a certificate of registration;

[1997, c. 271, §9 (AMD) .]

2. **Application information required of proposed supervisory physician.** The information that is required on the application filed by the proposed supervisory physician;

[1993, c. 600, Pt. A, §206 (AMD) .]

3. **Supervising physician's requirements.** The training and educational requirements, scope of permissible clinical medical procedures, the manner and methods by which the supervising physician shall supervise the physician assistant's medical services;

[1975, c. 680, §1 (NEW) .]

4. **Methods and conditions.** The methods and conditions under which the physician assistant may perform medical services;

[1975, c. 680, §1 (NEW) .]

5. **Temporary eligibility.** The issuance of temporary physician assistant certification and equivalency training eligibility for registration of physician assistant trainees;

[1975, c. 680, §1 (NEW) .]

6. **Advisory committee appointment.** Appointment of an advisory committee for continuing review of the physician assistant program and rules. The physician assistant member of the board must be a member of the advisory committee;

[2013, c. 101, §7 (AMD) .]

7. **Continuing educational requirements.** Continuing educational requirements as a precondition to continued licensure or licensure renewal;

[1975, c. 680, §1 (NEW) .]

8. **Fees for original application.** Fees for the original physician assistant application, which may not exceed $250;

[1999, c. 685, §5 (AMD) .]

9. **Initial application of supervising physician.** Fee for the initial application of the supervising physician, which may not exceed $100;

[1993, c. 600, Pt. A, §206 (AMD) .]

10. **Fee for transfer of license.** Fee for transfer of registration by a physician assistant from one supervising physician to another, which may not exceed $50; and

[1993, c. 600, Pt. A, §206 (AMD) .]

11. **Fees for biennial license renewal.** Fees for the biennial license renewal of physician assistants in an amount not to exceed $250.

[1999, c. 685, §6 (AMD) .]

SECTION HISTORY
1975, c. 680, §1 (NEW). 1991, c. 425, §13 (AMD). 1993, c. 600, §A206 (AMD). 1997, c. 271, §§7-10 (AMD). 1999, c. 685, §§5,6 (AMD). 2013, c. 101, §§6, 7 (AMD).

§3270-C. TERMINATION OF LICENSE

1. **Grounds.** The sanctions of section 3282-A apply to a physician assistant.

A. [1993, c. 600, Pt. A, §207 (RP).]

A-1. [2005, c. 162, §1 (RP).]

B. [2005, c. 162, §1 (RP).]

C. [2005, c. 162, §1 (RP).]

D. [2005, c. 162, §1 (RP).]

[2005, c. 162, §1 (AMD) .]

2. **Consent to physical or mental examination; objections to admissibility of examiner's testimony waived.** For the purposes of this section, every physician assistant registered under these rules who accepts the privilege of rendering medical services in this State by the filing of an application and of biannual registration renewal:

A. Is deemed to have consented to a mental or physical examination by a physician or other person selected or approved by the board when directed in writing by the board; and [2013, c. 355, §5 (AMD).]

B. Is deemed to have waived all objections to the admissibility of the examining physician's or other person's testimony or reports on the ground that these constitute a privileged communication. [2013, c. 355, §5 (AMD).]

Pursuant to Title 4, section 184, subsection 6, the District Court shall immediately suspend the certificate of a physician assistant who can be shown, through the results of the medical or physical examination conducted under this section or through other competent evidence, to be unable to render medical services with reasonable skill and safety to patients by reason of mental illness, alcohol intemperance, excessive use of drugs or narcotics or as a result of a mental or physical condition interfering with the competent rendering of medical services.

[2013, c. 355, §5 (AMD) .]

3. **Jurisdiction.**

[1977, c. 694, §609 (RP) .]

4. **Enforcement.**

[1977, c. 694, §609 (RP) .]

SECTION HISTORY
1975, c. 680, §1 (NEW). 1977, c. 694, §§607-609 (AMD). 1983, c. 378, §46 (AMD). 1993, c. 600, §A207 (AMD). 1999, c. 547, §B66 (AMD). 1999, c. 547, §B80 (AFF). 2003, c. 601, §3 (AMD). 2005, c. 162, §1 (AMD). 2013, c. 355, §5 (AMD).

§3270-D. TERMINATION OF EFFECTIVENESS

(REPEALED)

SECTION HISTORY
1975, c. 680, §1 (NEW). 1977, c. 47, (RP).

§3271. QUALIFICATIONS FOR MEDICAL LICENSURE

Except where otherwise specified by this chapter, all applicants for licensure as a physician or surgeon in the State must satisfy the following requirements. [1993, c. 600, Pt. A, §208 (AMD).]

1. **Medical education.** Each applicant must:

A. Graduate from a medical school designated as accredited by the Liaison Committee on Medical Education; [1983, c. 741, §1 (NEW).]

B. Graduate from an unaccredited medical school, be evaluated by the Educational Commission for Foreign Medical Graduates and receive a permanent certificate from the Educational Commission for Foreign Graduates; or [1989, c. 5, §1 (AMD).]

C. Graduate from an unaccredited medical school and achieve a passing score on the Visa Qualifying Examination or another comprehensive examination determined by the board to be substantially equivalent to the Visa Qualifying Examination. [1993, c. 600, Pt. A, §208 (AMD).]

[1993, c. 600, Pt. A, §208 (AMD) .]

2. **Postgraduate training.** Each applicant who has graduated from an accredited medical school on or after January 1, 1970 but before July 1, 2004 must have satisfactorily completed at least 24 months in a graduate educational program accredited by the Accreditation Council on Graduate Medical Education, the Canadian Medical Association or the Royal College of Physicians and Surgeons of Canada. Notwithstanding other requirements of postgraduate training, an applicant is eligible for licensure when the candidate has satisfactorily graduated from a combined postgraduate training program in which each of the contributing programs is accredited by the Accreditation Council on Graduate Medical Education and the applicant is eligible for accreditation by the American Board of Medical Specialties in both specialties. Each applicant who has graduated from an accredited medical school prior to January 1, 1970 must have satisfactorily completed at least 12 months in a graduate educational program accredited by the Accreditation Council on Graduate Medical Education, the Canadian Medical Association or the Royal College of Physicians and Surgeons of Canada. Each applicant who has graduated from an accredited medical school on or after July 1, 2004 or an unaccredited medical school must have satisfactorily completed at least 36 months in a graduate educational program accredited by the Accreditation Council on Graduate Medical Education, the Canadian Medical Association, the Royal College of Physicians and Surgeons of Canada or the Royal Colleges of England, Ireland or Scotland. An applicant who has completed 24 months of postgraduate training

and has received an unrestricted endorsement from the director of an accredited graduate education program in the State is considered to have satisfied the postgraduate training requirements of this subsection if the applicant continues in that program and completes 36 months of postgraduate training. Notwithstanding this subsection, an applicant who is board certified by the American Board of Medical Specialties is deemed to meet the postgraduate training requirements of this subsection. Notwithstanding this subsection, in the case of subspecialty or clinical fellowship programs, the board may accept in fulfillment of the requirements of this subsection postgraduate training at a hospital in which the subspecialty clinical program, such as a training program accredited by the American Dental Association Commission on Dental Accreditation or its successor organization, is not accredited but the parent specialty program is accredited by the Accreditation Council on Graduate Medical Education.

[2013, c. 355, §6 (AMD) .]

3. **Examination.** Each applicant must achieve a passing score on each component of the uniform examination of the Federation of State Medical Boards or other examinations designated by the board as the qualifying examination or examinations for licensure. Each applicant must additionally achieve a passing score on a State of Maine examination administered by the board.

[1993, c. 600, Pt. A, §208 (AMD) .]

4. **Fees.** Each applicant shall pay a fee up to $600 plus the cost of the qualifying examination or examinations.

[1999, c. 685, §7 (AMD) .]

5. **Board action.** An applicant may not be licensed unless the board finds that the applicant is qualified and no cause exists, as set forth in section 3282-A, that may be considered grounds for disciplinary action against a licensed physician or surgeon.

[1993, c. 600, Pt. A, §208 (AMD) .]

6. **Waiver for exceptional circumstances.** The board may waive the requirements of subsection 2 for a physician who does not meet the postgraduate training requirements but who meets the requirements of this subsection.

A. To be considered for a waiver under this subsection, the physician must:

(1) Be a graduate of a foreign medical school, not including a medical school in Canada or Great Britain;

(2) Be licensed in another state; and

(3) Have at least 3 years of clinical experience in the area of expertise. [2005, c. 363, §1 (NEW).]

B. If the physician meets the requirements of paragraph A, the board shall use the following qualifications of the physician to determine whether to grant a waiver:

(1) Completion of a 3-year clinical fellowship in the United States in the area of expertise. The burden of proof as to the quality and content of the fellowship is placed on the applicant;

(2) Appointment to a clinical academic position at a licensed medical school in the United States;

(3) Publication in peer-reviewed clinical medical journals recognized by the board;

(4) The number of years in clinical practice; and

(5) Other criteria demonstrating expertise, such as awards or other recognition. [2005, c. 363, §1 (NEW).]

C. The costs associated with the board's determination of licensing eligibility in regard to paragraph B must be paid by the applicant upon completion of the determination under paragraph A. The application cost must reflect and not exceed the actual cost of the final determination. [2005, c. 363, §1 (NEW).]

[2005, c. 363, §1 (NEW) .]

7. **Special license categories.** The board may issue a license limited to the practice of administrative medicine, or any other special license, as defined by routine technical rule of the board adopted pursuant to Title 5, chapter 375, subchapter 2-A.

[2013, c. 355, §7 (AMD) .]

SECTION HISTORY
1971, c. 591, §1 (NEW). 1971, c. 622, §117C (AMD). 1975, c. 404, §3 (AMD). 1977, c. 388, §3 (AMD). 1979, c. 345, §2 (AMD). 1981, c. 240, (AMD). 1981, c. 616, §1 (AMD). 1983, c. 378, §47 (AMD). 1983, c. 741, §1 (RPR). 1985, c. 542, (AMD). 1989, c. 5, §§1-3 (AMD). 1991, c. 425, §14 (AMD). 1993, c. 600, §A208 (AMD). 1993, c. 659, §B16 (AMD). 1995, c. 462, §A60 (AMD). 1999, c. 685, §7 (AMD). 2003, c. 601, §4 (AMD). 2005, c. 162, §2 (AMD). 2005, c. 363, §1 (AMD). 2007, c. 380, §2 (AMD). 2013, c. 355, §§6, 7 (AMD).

§3272. EXAMINATIONS

(REPEALED)

SECTION HISTORY
1971, c. 591, §1 (NEW). 1983, c. 741, §2 (RPR). 1993, c. 600, §A209 (AMD). 2005, c. 162, §3 (RP).

§3273. REEXAMINATION

(REPEALED)

SECTION HISTORY
1971, c. 591, §1 (NEW). 1979, c. 345, §3 (AMD). 1983, c. 378, §48 (AMD). 1983, c. 741, §3 (AMD). 1991, c. 425, §15 (AMD). 2005, c. 162, §4 (RP).

§3274. LICENSES

Each physician licensed under this chapter is entitled to receive a license under the seal of the board and signed by the chair and the secretary, which must be publicly displayed at the individual's principal place of practice, as long as this individual continues the practice of medicine. [1993, c. 600, Pt. A, §210 (AMD).]

SECTION HISTORY
1971, c. 591, §1 (NEW). 1993, c. 600, §A210 (AMD).

§3275. LICENSURE BY RECIPROCITY

1. **Licensure without examination.** The board may, at its discretion, grant licensure without written examination to a physician in good standing who otherwise meets the requirements of section 3271 and who has been:

A. Examined and certified by the National Board of Medical Examiners; [1977, c. 388, §4 (RPR).]

B. Examined and licensed by a board of another state, if the examination passed by the applicant is determined by the board to be equivalent to its own examination; or [1993, c. 600, Pt. A, §211 (AMD).]

C. Graduated from a nationally accredited medical school located in the United States, Canada or the British Isles and:

(1) Has been examined and certified by the Medical Council of Canada; or

(2) Has been examined and certified by the board of a Canadian province or a country in the British Isles, if the examination passed by the applicant is determined by the board to be equivalent in all essentials to its own examination. [1993, c. 600, Pt. A, §211 (AMD).]

An applicant may not be licensed pursuant to this section, unless the board finds that no cause exists, as set forth in section 3282-A, that would be considered grounds for disciplinary action against a licensed physician or surgeon.

[1993, c. 600, Pt. A, §211 (AMD) .]

2. **Fees.** A physician who applies for a license pursuant to subsection 1 shall pay a fee of not more than $600.

[1999, c. 685, §8 (AMD) .]

3. **Rules.** The board may make rules as may be necessary in connection with this section.

[1993, c. 600, Pt. A, §211 (AMD) .]

SECTION HISTORY
1971, c. 591, §1 (NEW). 1975, c. 680, §2 (RPR). 1977, c. 388, §4 (AMD). 1979, c. 345, §§4,5 (AMD). 1983, c. 741, §4 (AMD). 1991, c. 425, §16 (AMD). 1993, c. 600, §A211 (AMD). 1999, c. 685, §8 (AMD).

§3276. TEMPORARY LICENSURE

A physician who is qualified under section 3275 may, without examination, be granted a temporary license for a period not to exceed one year when the board determines that this action is necessary in order to provide relief for local or national emergencies or for situations in which the number of physicians is insufficient to supply adequate medical services or for the purpose of permitting the physician to serve as locum tenens for another physician who is licensed to practice medicine in this State. The fee for this temporary license may not be more than $400. [2003, c. 601, §5 (AMD).]

SECTION HISTORY
1971, c. 591, §1 (NEW). 1975, c. 404, §4 (RPR). 1975, c. 623, §51 (RP). 1975, c. 770, §186 (REEN). 1983, c. 741, §5 (AMD). 1991, c. 425, §17 (AMD). 1993, c. 600, §A212 (AMD). 1999, c. 685, §9 (AMD). 2003, c. 601, §5 (AMD).

§3277. YOUTH CAMP PHYSICIANS

A physician who is qualified under section 3275 may, at the discretion of the board, be temporarily licensed as a youth camp physician so that the physician may care for the campers in that particular youth camp licensed under Title 22, section 2495 for which the physician was hired and retained as a youth camp physician. That physician is entitled to practice only on patients in the youth camp. The temporary license must be obtained each year. Application for this temporary license must be made in the same form and

manner as for regular licensure. An examination may not be exacted from applicants for these temporary licenses. The fee for temporary licensure may not be more than $400 annually. [2009, c. 211, Pt. B, §28 (AMD).]

SECTION HISTORY
1971, c. 591, §1 (NEW). 1975, c. 404, §5 (AMD). 1977, c. 388, §5 (AMD). 1983, c. 741, §6 (AMD). 1991, c. 425, §18 (AMD). 1993, c. 600, §A213 (AMD). 2005, c. 162, §5 (AMD). 2009, c. 211, Pt. B, §28 (AMD).

§3278. EMERGENCY 100-DAY LICENSE

A physician who presents a current active unconditioned license from another United States licensing jurisdiction and who can provide reasonable proof of meeting qualifications for licensure in this State must be issued a license to serve temporarily for declared emergencies in the State or for other appropriate reasons as determined by the board. The license is effective for not more than 100 days. The fee for this license may be not more than $400. [2005, c. 162, §6 (AMD).]

SECTION HISTORY
1971, c. 591, §1 (NEW). 1975, c. 404, §6 (AMD). 1977, c. 388, §6 (RPR). 1983, c. 741, §7 (AMD). 1991, c. 425, §19 (AMD). 1993, c. 600, §A214 (AMD). 1999, c. 685, §10 (AMD). 2003, c. 601, §6 (AMD). 2005, c. 162, §6 (AMD).

§3279. INTERNS; RESIDENTS; VISITING INSTRUCTORS

1. **Interns.**

[2003, c. 601, §7 (RP) .]

2. **Residents.** An applicant who is qualified under section 3271, subsection 1 may receive a temporary educational certificate from the board to act as a hospital resident. A certificate to a hospital resident may be renewed every 3 years at the discretion of the board for not more than 7 years.

[2003, c. 601, §8 (AMD) .]

2-A. **Joint-program resident.** An applicant who is enrolled in a program of medical and graduate medical training conducted jointly by a medical school accredited by the Liaison Committee on Medical Education and a graduate medical education program approved by the Accreditation Council on Graduate Medical Education may receive a temporary educational certificate from the board to act as a hospital resident as part of that graduate medical education program if the applicant is concurrently enrolled in the final year of medical training and the initial year of graduate medical education. The board may not issue a certificate pursuant to this subsection for a period longer than that required to obtain the M.D. degree. The period during which the certificate is in force may not be considered in determining satisfaction of the requirement for postgraduate medical education under section 3271, subsection 2.

[1995, c. 337, §2 (NEW) .]

3. **Conditions of certification.** An applicant for a temporary educational certificate may not be certified unless the board finds that the applicant is qualified and that there exists no cause, as set forth in section 3282-A, that would be considered grounds for disciplinary action against a licensed physician or surgeon. The board, in its discretion, may require an examination for applicants for temporary educational certificates. Recipients of these certificates are entitled to all the rights granted to physicians who are licensed to practice medicine and surgery, except that their practice is limited to the training programs in which they are enrolled.

A temporary educational certificate may be suspended or revoked, or the board may refuse to renew the certificate, for the reasons stated in section 3282-A, or if the intern or hospital resident has violated the limitations placed upon the intern's temporary educational certificate.

[1993, c. 600, Pt. A, §215 (AMD) .]

4. **Visiting instructors.** A physician who has an unrestricted license to practice medicine or surgery in another state may practice medicine or surgery in this State when the physician is performing medical procedures as part of a course of instruction in graduate medical education in a hospital located in this State. The right of a visiting medical instructor to practice medicine in this State may be suspended or revoked for the reasons stated in section 3282-A, or if the visiting medical instructor has performed medical procedures that are not a part of a course of instruction.

[1993, c. 600, Pt. A, §215 (AMD) .]

5. **Contract students.** An applicant who is qualified under section 3271, subsection 1, who received a medical education as a contract student as provided in Title 20-A, chapter 421, and who agrees to practice in a primary care or other specialized area as defined in Title 20-A, section 11803, subsection 2, or an underserved area as defined in Title 20-A, section 11802, is considered to have completed the postgraduate training requirements of section 3271, subsection 2, upon satisfactory completion of at least 12 months in a graduate educational program approved as specified in section 3271. The board may make the relicensure of an individual for 4 years after the individual's licensure under this subsection contingent on the individual's continuing to practice in an underserved area.

This subsection applies only to individuals entering into a contract under Title 20-A, chapter 421, on or before December 31, 1984.

[1993, c. 600, Pt. A, §215 (AMD) .]

6. **Fees.** The board shall set fees for physicians and students licensed pursuant to this section. The amounts set for licenses issued under this section may not be more than $300.

[2003, c. 601, §8 (AMD) .]

SECTION HISTORY
1971, c. 591, §1 (NEW). 1975, c. 404, §7 (AMD). 1977, c. 564, §122 (AMD). 1983, c. 378, §49 (AMD). 1983, c. 741, §8 (RPR). 1987, c. 239, (AMD). 1991, c. 425, §§20,21 (AMD). 1993, c. 600, §A215 (AMD). 1995, c. 337, §2 (AMD). 2003, c. 601, §§7,8 (AMD).

§3280. BIENNIAL REREGISTRATION; FEES

(REPEALED)

SECTION HISTORY
1971, c. 591, §1 (NEW). 1975, c. 404, §§8,9 (AMD). 1975, c. 770, §187 (AMD). 1977, c. 388, §7 (AMD). 1979, c. 345, §6 (AMD). 1981, c. 616, §2 (AMD). 1983, c. 378, §50 (AMD). 1983, c. 378, §51 (AMD). 1985, c. 804, §20 (AMD). 1991, c. 425, §§22-24 (AMD). 1993, c. 526, §4 (AFF). 1993, c. 526, §1 (RP). 1993, c. 600, §A216 (AMD). 1995, c. 462, §A61 (RP).

§3280-A. BIENNIAL RENEWAL OF LICENSES; QUALIFICATION; FEES; REINSTATEMENT AFTER LAPSE

1. **Renewal of licenses.** A physician licensed pursuant to section 3271 or 3275 shall apply to the board for relicensure using application forms and submitting supporting documents required by the board. Except as provided in paragraph A for initial proration of expiration dates, the board shall provide to every physician whose application is approved and accepted a proof of license renewal that is valid for no longer than 2 years.

A. Beginning with licenses expiring after July 1, 1994, regardless of the date of initial licensure or last license renewal, the license of every physician born in an odd-numbered year expires at midnight in 1995 on the last day of the month of the physician's birth. The license of every physician born in an even-numbered year expires at midnight in 1996 on the last day of the month of the physician's birth. Upon expiration, a physician must renew the license issued pursuant to this section and this license must be renewed every 2 years by the last day of the month of birth of the physician seeking license renewal by means of application to the board, on forms prescribed and supplied by the board. [1993, c. 526, §2 (NEW); 1993, c. 526, §4 (AFF).]

B. At least 60 days prior to expiration of a current license, the board shall mail to each licensee at the licensee's last known address a notice of the requirement to renew the license with appropriate application forms for the renewal. Whenever a licensee fails, prior to the expiration of the licensee's current license, to return to the board a completed application either to renew the license or to withdraw from licensure, the board shall notify the licensee as soon as possible at the licensee's last known address that the license renewal is past due. Thirty days after the notice has been sent, if the application has neither been submitted by the licensee nor returned by the United States Postal Service as undeliverable, the board shall notify the licensee by certified mail, return receipt requested, that the licensee's license has been administratively suspended for 30 days. If an administratively complete relicensure application, pursuant to subsection 3, paragraph B, has not been submitted within the 30-day period of administrative suspension, the license immediately and automatically lapses. The board may not restore the license prior to completion of the reinstatement proceedings pursuant to subsection 4. [1993, c. 526, §2 (NEW); 1993, c. 526, §4 (AFF).]

[1993, c. 526, §2 (NEW); 1993, c. 526, §4 (AFF) .]

2. **Criteria for license renewal.** Prior to renewing a license:

A. The board may pose any question to the licensee or other sources that the board determines appropriate related to qualification for relicensure. These matters may include, but are not limited to, confirmation of health status, professional standing and conduct, professional liability claims history and license status in other jurisdictions. The board shall, after affording the licensee due process, deny license renewal if the board finds cause that may be considered grounds for refusal to renew the license pursuant to section 3282-A, including, but not limited to, a determination that an outstanding financial obligation to the board exists; and [2003, c. 601, §9 (AMD).]

B. Every licensee seeking renewal of a license with the intent of conducting active medical practice in this State shall submit evidence, satisfactory to the board, of successful completion of a course of continuing medical education within the preceding 24 months, as prescribed by rule. A physician licensed pursuant to section 3271 or 3275 may not engage in the practice of medicine in this State in any degree, including advising or prescribing medication for self, friends or family with or without charge, unless the board has found the licensee qualified by continuing medical education and has marked the current license with the designation "active." [1993, c. 526, §2 (NEW); 1993, c. 526, §4 (AFF).]

[2003, c. 601, §9 (AMD) .]

3. **Fees.** The following fees apply to licensure.

A. The board may charge a license renewal application fee of not more than $500 to all applicants for license renewal. [2005, c. 162, §7 (AMD).]

B. In addition to the application processing fee, the board may require payment of a late application fee of not more than $100 from all licensees, regardless of age, from whom the board has not received an administratively complete license renewal application prior to the license expiration date. An application is not administratively complete if it is not signed and dated by the licensee or does not provide full information and responses of sufficient detail to permit board review, evaluation and decision on renewal qualification. An application received without the required license renewal application fee is considered incomplete and the applicant is subject to a late fee. [1993, c. 526, §2 (NEW); 1993, c. 526, §4 (AFF).]

C. The board may prorate the fee for biennial relicensure for physicians who have been initially licensed within the past 12 months. The manner of proration, if done, must be explained in the board's published schedule of fees. The board may waive all or a portion of the established license renewal application fee upon receipt of a request for waiver based on hardship or other special circumstance. Any waiver request granted and the basis for the waiver must be recorded in the minutes of the board's proceedings. [1993, c. 526, §2 (NEW); 1993, c. 526, §4 (AFF).]

D. Unless received and deposited to the board's account in error and in violation of this section or the board's rules, a license renewal application fee or late fee paid to the board is not refundable if the board or the board's staff has commenced processing the application, regardless of the board's action on the application. [1993, c. 526, §2 (NEW); 1993, c. 526, §4 (AFF).]

[2005, c. 162, §7 (AMD) .]

4. **Reinstatement after lapse.** A physician may be reinstated after the lapse of a license under the following conditions.

A. A license that has lapsed pursuant to subsection 1, paragraph B may be reinstated upon application by the physician on forms provided by the board. A physician whose license has lapsed for more than 5 years shall apply for a new license in order to practice medicine in the State. [1993, c. 526, §2 (NEW); 1993, c. 526, §4 (AFF).]

B. When applying for reinstatement, the licensee must state the reason why the license lapsed and pay all fees in arrears at the time of lapse plus the current license renewal application fee and a nonrefundable reinstatement application processing fee of $100. [1993, c. 526, §2 (NEW); 1993, c. 526, §4 (AFF).]

C. The board may not reinstate a lapsed license if the board finds any cause that may be considered a ground for discipline pursuant to section 3282-A if the license had been in force. Prior to concluding that no cause exists, the board shall conduct the inquiries required by subsection 2, paragraph A for applications for renewal. In addition, the board may not reinstate the license of any physician who has not provided evidence satisfactory to the board of having actively engaged in the practice of medicine continuously for at least the past 12 months under the license of another jurisdiction of the United States or Canada unless the applicant has first satisfied the board of the applicant's current competency by passage of written examinations or practical demonstrations as the board may from time to time prescribe for this purpose through rulemaking. [1993, c. 526, §2 (NEW); 1993, c. 526, §4 (AFF).]

[1993, c. 526, §2 (NEW); 1993, c. 526, §4 (AFF) .]

SECTION HISTORY
1993, c. 526, §2 (NEW). 1993, c. 526, §4 (AFF). 1997, c. 680, §C3 (AMD). 1999, c. 685, §11 (AMD). 2003, c. 601, §9 (AMD). 2005, c. 162, §7 (AMD).

§3281. WITHDRAWAL OF LICENSE

The holder of a license or temporary license who notifies the board in writing of the withdrawal of the holder's license is not required to pay licensure fees or penalties beyond those due at the time of the holder's withdrawal, but after a holder gives this notice, the holder's license to practice is not valid until reinstated by the board. [1993, c. 600, Pt. A, §217 (AMD).]

An applicant for reinstatement is entitled to be reinstated upon paying a reinstatement fee of $50 and satisfying the board that the applicant has paid all fees and penalties due at the time of the applicant's withdrawal, and no cause exists for revoking or suspending the applicant's license, and the applicant has applied within 5 years after the applicant's withdrawal, and was in active practice outside this State within one year prior to the filing of application for reinstatement. [1993, c. 600, Pt. A, §217 (AMD).]

SECTION HISTORY
1971, c. 591, §1 (NEW). 1977, c. 388, §8 (AMD). 1993, c. 600, §A217 (AMD).

§3282. COMPLAINTS; ALLEGATIONS; GROUNDS FOR INVESTIGATION AND HEARING

(REPEALED)

SECTION HISTORY
1971, c. 591, §1 (NEW). 1977, c. 388, §9 (RPR). 1977, c. 694, §610 (AMD). 1979, c. 619, §1 (RPR). 1983, c. 176, §A17 (AMD). 1983, c. 378, §52 (RP). 1985, c. 506, §A69 (AMD).

§3282-A. DISCIPLINARY SANCTIONS

1. **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 any rules adopted by the board.

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 after receipt of this information. The licensee shall respond within 30 days. The board shall share the licensee's response with the complainant, unless the board determines that it would be detrimental to the health of the complainant to obtain the response. 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 the complaint is of sufficient gravity to warrant further action, the board or a subcommittee of the board may request and conduct an informal conference with the licensee. The board shall provide the licensee with adequate notice of the conference and the issues to be discussed. The complainant may attend and may be accompanied by up to 2 individuals, including legal counsel. The conference must be conducted in executive session of the board or a subcommittee of the board, pursuant to Title 1, section 405, unless otherwise requested by the licensee. Before the board decides what action to take at the conference or as a result of the conference, the board or a subcommittee of the board shall give the complainant a reasonable opportunity to speak. Statements made at the conference may not be introduced at a subsequent formal hearing unless all parties consent. The complainant, the licensee or either of their representatives shall maintain the confidentiality of the conference.

When a complaint has been filed against a licensee and the licensee moves or has moved to another state, the board may report to the appropriate licensing board in that state the complaint that has been filed, other complaints in the physician's record on which action was taken and disciplinary actions of the board with respect to that physician.

When an individual applies for a license under this chapter, the board may investigate the professional record of that individual, including professional records that the individual may have as a licensee in other states. The board may deny a license or authorize a restricted license based on the record of the applicant in other states.

If the board 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 determines appropriate.

A. With the consent of the licensee, the board may enter into a consent agreement that fixes the period and terms of probation best adapted to protect the public health and safety and 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. [1991, c. 824, Pt. A, §68 (RPR).]

B. In consideration for acceptance of a voluntary surrender of the license, the board may 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. [1991, c. 824, Pt. A, §68 (RPR).]

C. If the board concludes that modification or nonrenewal of the license is in order, the board shall hold an adjudicatory hearing in accordance with Title 5, chapter 375, subchapter 4. [2009, c. 28, §1 (AMD).]

D. [2013, c. 355, §8 (RP).]

The board shall require a licensee to notify all patients of the licensee of a probation or stipulation under which the licensee is practicing as a result of board disciplinary action. This requirement does not apply to a physician participating in an alcohol or drug treatment program pursuant to Title 24, section 2505, a physician who retires following charges made or complaints investigated by the board or a physician under the care of a professional and whose medical practices and services are not reduced, restricted or prohibited by the disciplinary action.

[2013, c. 355, §8 (AMD) .]

2. **Grounds for discipline.** The board may suspend or revoke a license pursuant to Title 5, section 10004. The following are grounds for an action to refuse to issue, modify, restrict, suspend, revoke or refuse to renew the license of an individual licensed under this chapter:

A. The practice of fraud, deceit or misrepresentation in obtaining a license under this chapter or in connection with service rendered within the scope of the license issued; [2013, c. 355, §9 (AMD).]

B. Misuse of alcohol, drugs or other substances that has resulted or may result in the licensee performing services in a manner that endangers the health or safety of patients; [2013, c. 105, §7 (AMD).]

C. A professional diagnosis of a mental or physical condition that has resulted or may result in the licensee performing services in a manner that endangers the health or safety of patients; [1993, c. 600, Pt. A, §218 (AMD).]

D. Aiding or abetting the practice of medicine by an individual who is not licensed under this chapter and who claims to be legally licensed; [1993, c. 600, Pt. A, §218 (AMD).]

E. Incompetence in the practice for which the licensee is licensed. A licensee is considered incompetent in the practice if the licensee has:

(1) Engaged in conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client or patient or the general public; or

(2) Engaged in conduct that evidences a lack of knowledge or inability to apply principles or skills to carry out the practice for which the licensee is licensed; [1993, c. 600, Pt. A, §218 (AMD).]

F. Unprofessional conduct. A licensee is considered to have engaged in unprofessional conduct if the licensee violates a standard of professional behavior, including engaging in disruptive behavior, that has been established in the practice for which the licensee is licensed. For purposes of this paragraph, "disruptive behavior" means aberrant behavior that interferes with or is likely to interfere with the delivery of care; [2007, c. 380, §3 (AMD).]

G. Subject to the limitations of Title 5, chapter 341, conviction of a crime that involves dishonesty or false statement or relates directly to the practice for which the licensee is licensed, or conviction of a crime for which incarceration for one year or more may be imposed; [1993, c. 600, Pt. A, §218 (AMD).]

H. A violation of this chapter or a rule adopted by the board; [1993, c. 600, Pt. A, §218 (AMD).]

I. Engaging in false, misleading or deceptive advertising; [1983, c. 378, §53 (NEW).]

J. Prescribing narcotic or hypnotic or other drugs listed as controlled substances by the Drug Enforcement Administration for other than accepted therapeutic purposes; [1989, c. 291, §4 (AMD).]

K. Failure to report to the secretary of the board a physician licensed under this chapter for addiction to alcohol or drugs or for mental illness in accordance with Title 24, section 2505, except when the impaired physician is or has been a patient of the licensee; [1997, c. 680, Pt. C, §6 (AMD).]

L. Failure to comply with the requirements of Title 24, section 2905-A; [2013, c. 355, §10 (AMD).]

M. Revocation, suspension or restriction of a license to practice medicine or other disciplinary action; denial of an application for a license; or surrender of a license to practice medicine following the institution of disciplinary action by another state or a territory of the United States or a foreign country if the conduct resulting in the disciplinary or other action involving the license would, if committed in this State, constitute grounds for discipline under the laws or rules of this State; [2013, c. 355, §11 (AMD).]

N. Engaging in any activity requiring a license under the governing law of the board that is beyond the scope of acts authorized by the license held; [2013, c. 355, §12 (NEW).]

O. Continuing to act in a capacity requiring a license under the governing law of the board after expiration, suspension or revocation of that license; [2013, c. 355, §12 (NEW).]

P. Noncompliance with an order or consent agreement of the board; [2013, c. 355, §12 (NEW).]

Q. Failure to produce upon request of the board any documents in the licensee's possession or under the licensee's control concerning a pending complaint or proceeding or any matter under investigation by the board, unless otherwise prohibited by state or federal law; or [2013, c. 355, §12 (NEW).]

R. Failure to timely respond to a complaint notification sent by the board. [2013, c. 355, §12 (NEW).]

[2013, c. 105, §7 (AMD); 2013, c. 355, §§8-12 (AMD) .]

SECTION HISTORY

1983, c. 378, §53 (NEW). 1989, c. 291, §§4,5 (AMD). 1991, c. 186, (AMD). 1991, c. 534, §7 (AMD). 1991, c. 824, §A68 (AMD). 1993, c. 600, §A218 (AMD). 1997, c. 680, §§C4-8 (AMD). 1999, c. 547, §B67 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 380, §3 (AMD). 2009, c. 28, §1 (AMD). 2013, c. 105, §7 (AMD). 2013, c. 355, §§8-12 (AMD).

§3283. DISCIPLINARY ACTION

(REPEALED)

SECTION HISTORY
1971, c. 591, §1 (NEW). 1977, c. 388, §10 (AMD). 1977, c. 694, §611 (RPR). 1979, c. 619, §2 (RPR). 1983, c. 378, §54 (RP).

§3284. DISCIPLINARY ACTION; NOTICE, APPEAL

(REPEALED)

SECTION HISTORY
1971, c. 591, §1 (NEW). 1977, c. 694, §612 (RP).

§3285. PUBLIC HEARINGS

(REPEALED)

SECTION HISTORY
1971, c. 591, §1 (NEW). 1977, c. 694, §613 (RP).

§3286. EMERGENCY ACTION

Upon its own motion or upon complaint, the board, in the interests of public health, safety and welfare, shall treat as an emergency a complaint or allegation that an individual licensed under this chapter is or may be unable to practice medicine with reasonable skill and safety to patients by reason of mental illness, alcohol intemperance, excessive use of drugs, narcotics or as a result of a mental or physical condition interfering with the competent practice of medicine. In enforcing this paragraph, the board may compel a physician to submit to a mental or physical examination by a physician or another person designated by the board. Failure of a physician to submit to this examination when directed constitutes an admission of the allegations against the physician, unless the failure was due to circumstances beyond the physician's control, upon which a final order of disciplinary action may be entered without the taking of testimony or presentation of evidence. A physician affected under this paragraph must, at reasonable intervals, be afforded an opportunity to demonstrate that the physician can resume the competent practice of medicine with reasonable skill and safety to patients. [2013, c. 355, §13 (AMD).]

For the purpose of this chapter, by practicing or by making and filing a biennial license to practice medicine in this State, every physician licensed under this chapter who accepts the privilege to practice medicine in this State is deemed to have given consent to a mental or physical examination when directed in writing by the board and to have waived all objections to the admissibility of the examiner's testimony or examination reports on the grounds that the testimony or reports constitute a privileged communication. [2013, c. 355, §14 (AMD).]

Injunctions must issue immediately to enjoin the practice of medicine by an individual licensed to practice under this chapter when that individual's continued practice will or may cause irreparable damage to the public health or safety prior to the time proceedings under this chapter could be instituted and completed. In a petition for injunction pursuant to this section, there must be set forth with particularity the facts that

make it appear that irreparable damage to the public health or safety will or may occur prior to the time proceedings under this chapter could be instituted and completed. The petition must be filed in the name of the board on behalf of the State. [1993, c. 600, Pt. A, §219 (AMD).]

SECTION HISTORY
1971, c. 591, §1 (NEW). 1981, c. 594, §2 (AMD). 1993, c. 600, §A219 (AMD). 1997, c. 271, §11 (AMD). 2013, c. 355, §§13, 14 (AMD).

§3287. REINSTATEMENT ON BOARD'S OWN MOTION

(REPEALED)

SECTION HISTORY
1971, c. 591, §1 (NEW). 1983, c. 378, §55 (RP).

§3288. REINSTATEMENT ON APPLICATION OF PERSON WHOSE LICENSE IS SUSPENDED OR REVOKED

(REPEALED)

SECTION HISTORY
1971, c. 591, §1 (NEW). 1983, c. 378, §55 (RP).

§3289. RECORD OF REINSTATEMENT

Upon the reinstatement of a license by the board, either upon its own motion or upon application, the secretary of the board shall immediately enter the order of reinstatement in the minutes and records of the board. [1993, c. 600, Pt. A, §220 (AMD).]

SECTION HISTORY
1971, c. 591, §1 (NEW). 1993, c. 600, §A220 (AMD).

Subchapter 3: GENERAL PROVISIONS

§3290. RECORDS OF PROCEEDINGS AND ORDERS OF PROCEEDINGS

(REPEALED)

SECTION HISTORY
1971, c. 591, §1 (NEW). 1983, c. 741, §9 (RP).

§3291. IMMUNITY OF LICENSEE RENDERING EMERGENCY CARE

(REPEALED)

SECTION HISTORY
1971, c. 591, §1 (NEW). 1975, c. 452, §4 (RP).

§3292. TREATMENT OF MINORS

An individual licensed under this chapter who renders medical care to a minor for treatment of venereal disease or abuse of drugs or alcohol or for the collection of sexual assault evidence through a sexual assault forensic examination is under no obligation to obtain the consent of the minor's parent or guardian or to inform the parent or guardian of the treatment. This section may not be construed to prohibit the licensed individual rendering the treatment from informing the parent or guardian. For purposes of this section, "abuse

of drugs" means the use of drugs solely for their stimulant, depressant or hallucinogenic effect upon the higher functions of the central nervous system and not as a therapeutic agent recommended by a practitioner in the course of medical treatment. [1999, c. 90, §4 (AMD).]

SECTION HISTORY
1971, c. 591, §1 (NEW). 1973, c. 145, §3 (RPR). 1979, c. 96, §3 (AMD). 1993, c. 600, §A221 (AMD). 1999, c. 90, §4 (AMD).

§3293. REVIEW COMMITTEE MEMBER IMMUNITY

A physician licensed under this chapter who is a member of a utilization review committee, medical review committee, surgical review committee, peer review committee or disciplinary committee that is a requirement of accreditation by the Joint Commission on Accreditation of Hospitals or is established and operated under the auspices of the physician's respective state or county professional society or the Board of Licensure in Medicine is immune from civil liability for undertaking or failing to undertake an act within the scope of the function of the committee. [1993, c. 600, Pt. A, §222 (AMD).]

SECTION HISTORY
1971, c. 591, §1 (NEW). 1975, c. 83, §2 (RPR). 1987, c. 646, §10 (RPR). 1993, c. 600, §A222 (AMD).

§3294. JURISDICTION

(REPEALED)

SECTION HISTORY
1971, c. 591, §1 (NEW). 1977, c. 694, §614 (RP).

§3295. COMMUNICATIONS BETWEEN PHYSICIANS AND PATIENTS

(REPEALED)

SECTION HISTORY
1973, c. 625, §218 (NEW). 1977, c. 564, §123 (RP).

§3296. RECORDS OF PROCEEDINGS OF MEDICAL STAFF REVIEW COMMITTEES CONFIDENTIAL

All proceedings and records of proceedings concerning medical staff reviews, hospital reviews and other reviews of medical care conducted by committees of physicians and other health care personnel on behalf of hospitals located within the State or on behalf of individual physicians, when the reviews are required by state or federal law, rule or as a condition of accreditation by the Joint Commission on Accreditation of Hospitals or the American Osteopathic Association Committee on Hospital Accreditation or are conducted under the auspices of the state or county professional society to which the physician belongs, are confidential and are exempt from discovery. [1993, c. 600, Pt. A, §223 (AMD).]

Provision of information protected by this section to the board pursuant to Title 24, section 2506 does not waive or otherwise affect the confidentiality of the records or the exemption from discovery provided by this section for any other purpose. [1997, c. 271, §12 (NEW).]

SECTION HISTORY
1975, c. 137, §2 (NEW). 1987, c. 646, §11 (AMD). 1993, c. 600, §A223 (AMD). 1997, c. 271, §12 (AMD).

§3297. POSTING OF POLICY REGARDING ACCEPTANCE OF MEDICARE ASSIGNMENT

An allopathic physician licensed pursuant to chapter 48, an osteopathic physician licensed pursuant to chapter 36, a chiropractor licensed pursuant to chapter 9 and a podiatrist licensed pursuant to chapter 51 who treats Medicare-eligible individuals shall post in a conspicuous place that professional's policy regarding the acceptance of Medicare assignment. [1993, c. 600, Pt. A, §224 (AMD).]

This posting must state the policy on accepting assignment and name the individual with whom the patient should communicate regarding the policy. [1993, c. 600, Pt. A, §224 (AMD).]

The Board of Licensure in Medicine, the Board of Osteopathic Licensure, the Board of Licensure of Podiatric Medicine and the Board of Chiropractic Licensure shall enforce the provisions of this section and inform each licensee of the licensee's obligation under this law. Each board may discipline a licensee under its jurisdiction for failing to comply with this section and impose a monetary penalty of not less than $100 and not more than $1,000 for each violation. [1993, c. 600, Pt. A, §224 (AMD).]

SECTION HISTORY
1983, c. 325, (NEW). 1987, c. 719, (AMD). 1993, c. 600, §A224 (AMD).

§3298. ESTABLISHMENT OF PROTOCOLS FOR OPERATION OF PROFESSIONAL REVIEW COMMITTEE

The board may establish protocols for the operation of a professional review committee as defined in Title 24, section 2502, subsection 4-A. The protocols must include the committee reporting information the board considers appropriate regarding reports received, contacts or investigations made and the disposition of each report, provided that the committee is not required to disclose any personally identifiable information. The protocols may not prohibit an impaired physician or physician assistant from seeking alternative forms of treatment. [1993, c. 39, §2 (AMD).]

SECTION HISTORY
1985, c. 185, §5 (NEW). 1993, c. 39, §2 (AMD).

§3299. PROMULGATION OF COMPLAINT PROCEDURES

(REPEALED)

SECTION HISTORY
1989, c. 462, §13 (NEW). 1993, c. 600, §A225 (RP).

§3299-A. CONSUMER INFORMATION

(REPEALED)

SECTION HISTORY
1993, c. 600, §A226 (NEW). 1995, c. 370, §4 (RP).

§3300. RELEASE OF CONTACT LENS PRESCRIPTION

After contact lenses have been adequately fitted and the patient released from immediate follow-up care by the physician, the patient may request a copy of the contact lens specifications from the physician. The physician shall provide a copy of the prescription, at no cost, which must contain the information necessary to properly duplicate the current prescription. The contact lens prescription must contain an expiration date not to exceed 24 months from the date of issue. The prescription may contain fitting guidelines and may also contain specific instructions for use by the patient. [1997, c. 117, §7 (AMD).]

The prescribing physician is not liable for an injury to or a condition of a patient that results from negligence in packaging, manufacturing or dispensing lenses by anyone other than the prescribing physician. [1993, c. 600, Pt. A, §227 (AMD).]

The dispensing party may dispense contact lenses only upon receipt of a written prescription, except that a physician may fill a prescription of an optometrist or another physician without a copy of the prescription. Mail order contact lens suppliers must be licensed by and register with the Board of Commissioners of the Profession of Pharmacy pursuant to section 13751, subsection 3-A and are subject to discipline by that board for violations of that board's rules and the laws governing the board. An individual who fills a contact lens prescription shall maintain a file of that prescription for a period of 5 years. An individual, a corporation or any other entity, other than a mail order contact lens supplier, that improperly fills a contact lens prescription or fills an expired prescription commits a civil violation for which a forfeiture of not less than $250 nor more than $1,000 may be adjudged. [1997, c. 117, §8 (AMD).]

An individual may file a complaint with the board seeking disciplinary action concerning violations of this section. The board shall investigate or cause to be investigated and shall resolve a complaint. The board shall conduct its actions in accordance with the Maine Administrative Procedure Act. [1993, c. 600, Pt. A, §227 (AMD).]

SECTION HISTORY
1991, c. 675, §5 (NEW). 1993, c. 600, §A227 (AMD). 1997, c. 117, §§7,8 (AMD).

§3300-A. CONFIDENTIALITY OF PERSONAL INFORMATION OF APPLICANT OR LICENSEE

An applicant or licensee shall provide the board with a current professional address and telephone number, which will be their public contact address, and a personal residence address and telephone number. An applicant's or licensee's personal residence address and telephone number is confidential information and may not be disclosed except as permitted by this section or as required by law, unless the personal residence address and telephone number have been provided as the public contact address. Personal health information submitted as part of any application is confidential information and may not be disclosed except as permitted by this section or as required by law. The personal health information and personal residence address and telephone number may be provided to other governmental licensing or disciplinary authorities or to any health care providers located within or outside this State that are concerned with granting, limiting or denying a physician's employment or privileges. [2001, c. 214, §2 (NEW).]

SECTION HISTORY
2001, c. 214, §2 (NEW).

§3300-B. EXPEDITED PARTNER THERAPY

An individual licensed under this chapter may not be disciplined for providing expedited partner therapy in accordance with the provisions of Title 22, chapter 251, subchapter 3, article 5. [2009, c. 533, §4 (NEW).]

SECTION HISTORY
2009, c. 533, §4 (NEW).

§3300-C. REVIEW OF PRESCRIPTIONS WRITTEN BY PHYSICIAN ASSISTANT

The supervising physician of a physician assistant, at least annually, shall review prescriptions written for a schedule II drug by that physician assistant. As used in this section, "schedule II drug" has the same meaning as in the federal Controlled Substances Act of 1970, 21 United States Code, Section 812. [2011, c. 477, Pt. J, §1 (NEW).]

SECTION HISTORY
2011, c. 477, Pt. J, §1 (NEW).

Chapter 49: PLUMBERS

Subchapter 1: GENERAL PROVISIONS

§3301. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1999, c. 386, Pt. L, §1 (AMD).]

1. **Apprentice plumber.**

[1983, c. 468, §11 (RP) .]

1-A. **Commissioner.** "Commissioner" means the Commissioner of Professional and Financial Regulation.

[1985, c. 389, §16 (NEW) .]

1-B. **Department.** "Department" means the Department of Professional and Financial Regulation.

[1985, c. 389, §16 (NEW) .]

2. **Board.** "Board" means the Plumbers' Examining Board appointed under section 3401.

[1999, c. 386, Pt. L, §1 (AMD) .]

2-A. **Journeyman-in-training.** "Journeyman-in-training" means a person who is licensed under this chapter to assist in making plumbing installations under the direct supervision of a journeyman plumber or a master plumber who may not act as or represent that the person is a journeyman plumber, as defined in subsection 3.

[1999, c. 386, Pt. L, §1 (AMD) .]

3. **Journeyman plumber.** "Journeyman plumber" means any person who customarily performs the work of installing plumbing and drainage under the employment and direction of a master plumber or, not being a master plumber, does plumbing repair work as a regular part-time occupation.

[1999, c. 386, Pt. L, §1 (AMD) .]

4. **Limited license.** "Limited license" means a limited plumber's license to install and service plumbing work related to a specific type of plumbing equipment or to specific plumbing installations granted to any person who has passed a satisfactory examination before the board. It must specify the name of the person who is limited to engage in the occupation of installing and servicing the plumbing work related to the type of equipment or to specific plumbing installations only as authorized by the license.

[1999, c. 386, Pt. L, §1 (AMD) .]

5. **Master plumber.** "Master plumber" means any person, firm or corporation, qualified under this chapter, engaging in, or about to engage in, the business of installing plumbing or plumbing systems. The license must specify the name of the person, firm or corporation to whom the license is issued and in the case of a firm or corporation the license must further specify the licensed master plumber in whose name it is issued, pursuant to the requirements of section 3507.

[1999, c. 386, Pt. L, §1 (AMD) .]

5-A. **Propane and natural gas installer.** A "propane and natural gas installer" means a person licensed under chapter 139 when installing propane and natural gas utilization equipment, subject to the restrictions of that person's license.

[2009, c. 344, Pt. D, §11 (AMD); 2009, c. 344, Pt. E, §2 (AFF) .]

6. **Trainee plumber.** "Trainee plumber" means any person who is engaged in assisting in making plumbing installations under the direct supervision of a journeyman plumber or master plumber, whether for the purpose of learning the trade or otherwise.

[1999, c. 386, Pt. L, §1 (AMD) .]

7. **Trainee plumber.**

[1983, c. 468, §15 (RP) .]

SECTION HISTORY
1971, c. 363, §1 (AMD). 1973, c. 521, §9 (AMD). 1975, c. 118, §§1,2 (AMD). 1977, c. 469, §§1-5 (AMD). 1983, c. 468, §§11-15 (AMD). 1985, c. 389, §§16,17 (AMD). 1987, c. 597, §§5-8 (AMD). 1993, c. 9, §1 (AMD). 1995, c. 502, §H31 (AMD). 1999, c. 386, §L1 (AMD). 2009, c. 344, Pt. D, §11 (AMD). 2009, c. 344, Pt. E, §2 (AFF).

§3302. APPLICABILITY

1. **License required.** A license is required for any person, corporation, partnership or other entity who is engaged in plumbing or performing plumbing installations. No license is required for any activity for which a permit is not required under Title 30, section 3223 or its successor. This section does not apply to the following:

A. Plumbing by regular employees of public utilities as defined in Title 35-A, section 102, when working as such; [1987, c. 141, Pt. B, §33 (AMD).]

B. Plumbing by oil burner technicians, duly licensed under chapter 139, and propane and natural gas installers, licensed under chapter 139, except that this exception only applies to hot and cold water connections to existing piping in the same room where the installation is taking place and does not apply beyond any existing branch connection supplying water; and [2009, c. 344, Pt. D, §12 (AMD); 2009, c. 344, Pt. E, §2 (AFF).]

C. Plumbing by a person in a single-family residence occupied or to be occupied by that person as that person's bona fide personal abode provided that installation conforms with board laws and rules. [1999, c. 386, Pt. L, §2 (AMD).]

[2009, c. 344, Pt. D, §12 (AMD); 2009, c. 344, Pt. E, §2 (AFF) .]

2. **Municipal licenses not required.** A municipality may not require plumbers to be municipally licensed nor may any municipality issue a permit for any plumbing installation unless satisfied that the person, firm or corporation applying for the permit complies with this chapter.

[1999, c. 386, Pt. L, §2 (AMD) .]

3. **Supervision of trainee plumber.** A master or journeyman plumber may not have more than 3 trainee plumbers working under the master or journeyman plumber's direct supervision.

[1999, c. 386, Pt. L, §2 (AMD) .]

SECTION HISTORY
1973, c. 521, §6 (RPR). 1977, c. 78, §182 (AMD). 1977, c. 469, §6 (RPR). 1983, c. 468, §16 (AMD). 1987, c. 141, §B33 (AMD). 1993, c. 9, §2 (AMD). 1999, c. 386, §L2 (AMD). 2009, c. 344, Pt. D, §12 (AMD). 2009, c. 344, Pt. E, §2 (AFF).

§3303. PROVISIONS IN CITY CHARTERS NOT AFFECTED

(REPEALED)

SECTION HISTORY
1977, c. 469, §7 (RP).

§3304. UNLICENSED PRACTICE

Any person who violates section 3302, subsection 1 is subject to the provisions of Title 10, section 8003-C. [2007, c. 402, Pt. O, §1 (NEW).]

SECTION HISTORY
1971, c. 363, §2 (AMD). 1973, c. 521, §7 (AMD). 1977, c. 469, §8 (RPR). 1983, c. 413, §140 (RPR). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 402, Pt. O, §1 (RPR).

§3305. EXCEPTIONS

(REPEALED)

SECTION HISTORY
1973, c. 521, §8 (NEW). 1977, c. 469, §9 (RP).

Subchapter 2: REGULATIONS

§3351. LOCAL ORDINANCE OR BYLAWS

(REPEALED)

SECTION HISTORY
1973, c. 521, §5 (RP).

§3352. PERMITS; FEES; HEARINGS ON REGULATIONS

(REPEALED)

SECTION HISTORY
1965, c. 234, §1 (AMD). 1973, c. 521, §5 (RP).

§3353. LAW GOVERNING; LOCAL INSPECTORS

(REPEALED)

SECTION HISTORY
1973, c. 521, §5 (RP).

Subchapter 3: EXAMINING BOARD

§3401. MEMBERSHIP; VACANCIES; REMOVAL; COMPENSATION

The Plumbers' Examining Board, as established by Title 5, section 12004-A, subsection 32, consists of 5 members, who are appointed by the Governor as follows. [2003, c. 446, §4 (AFF); 2003, c. 446, §1 (RPR).]

1. **Public member.** One of the members of the board must be a public member as defined in Title 5, section 12004-A.

[2007, c. 402, Pt. O, §2 (AMD) .]

2. **Master plumbers.** Three of the members of the board must be master plumbers as defined in section 3301, and one of those 3 members must be a member of a bona fide labor organization.

[2013, c. 217, Pt. F, §1 (AMD) .]

3. **Journeyman plumbers.**

[2003, c. 446, §1 (NEW); 2003, c. 446, §4 (AFF); T. 32, §3401, sub-§3 (RP) .]

3-A. **Journeyman plumber.**

[2013, c. 217, Pt. F, §2 (RP) .]

4. **Local plumbing inspector.** One of the members of the board must be a local plumbing inspector who has been engaged in plumbing inspections for at least 4 years and is employed by a municipality.

[2007, c. 402, Pt. O, §2 (AMD) .]

Members are appointed for terms of 4 years. Appointments of members must comply with Title 10, section 8009. [2007, c. 402, Pt. O, §2 (AMD).]

Any member of the board may be removed from office for cause by the Governor. [2003, c. 446, §1 (NEW); 2003, c. 446, §4 (AFF).]

SECTION HISTORY
1965, c. 234, §2 (AMD). 1975, c. 575, §38 (AMD). 1975, c. 771, §§362,363 (AMD). 1977, c. 469, §§10,10A,11 (AMD). 1981, c. 703, §A77 (AMD). 1983, c. 413, §141 (RPR). 1983, c. 553, §39 (AMD). 1983, c. 812, §229 (AMD). 1987, c. 597, §9 (RPR). 1989, c. 503, §B140 (AMD). 1993, c. 600, §A228 (AMD). 1995, c. 397, §54 (AMD). 2003, c. 107, §1 (AMD). 2003, c. 107, §2 (AFF). 2003, c. 446, §4 (AFF). 2003, c. 446, §1 (RPR). 2007, c. 402, Pt. O, §2 (AMD). 2013, c. 217, Pt. F, §§1, 2 (AMD).

§3402. EMPLOYEES

State plumbing inspectors appointed under this section have powers throughout the several counties of the State similar to those sheriffs have in their respective counties, relating to enforcement of this chapter and rules adopted under this chapter. These powers are limited to the power to issue citations, the power to serve summonses, to conduct investigations and to order corrections of violations by licensees in accordance with the specific statutory authority set forth in this chapter. If any state plumbing inspector finds any plumbing installation in any building or structure which does not comply with the adopted state plumbing code that

inspector shall, with the consent of the local plumbing inspector, order that the installation be removed or remedied and that order must be complied with immediately by the owner or occupant of the premises or building or the installer of the plumbing in violation. If any state plumbing inspector finds any plumbing installation in any building or structure which creates a danger to other property or to the public, the inspector may forbid use of the building or structure by serving a written order upon the owner and the occupant, if any, to vacate within a reasonable period of time to be stated in the order. [1991, c. 509, §23 (AMD).]

Any person ordered by a state plumbing inspector to correct a plumbing deficiency or to vacate a building or structure may, within 7 days, appeal to the Plumbers' Examining Board, which shall within a reasonable time review the order and file its decision on the appeal. The decision of the board must be complied with within the time that is fixed in the decision. If any person, firm or corporation fails or refuses to carry out any such order of any state plumbing inspector or decision of the board, a court may order appropriate relief. Any person ordered by the board to correct a plumbing deficiency or to vacate a building or structure may appeal the order to the Superior Court pursuant to the Maine Rules of Civil Procedure, Rule 80B, by filing a petition for review within 48 hours of receipt of the order. The order by the Plumbers' Examining Board may not be stayed unless by order of the Superior Court for good cause. [1999, c. 386, Pt. L, §3 (AMD).]

Upon the failure of any person to carry out the final order, the Plumbers' Examining Board may petition the Superior Court for the county in which the premises or building is located from an injunction to enforce that order. If the court determines upon hearing the petition that a lawful final order was issued, it shall order compliance. [1989, c. 483, Pt. A, §51 (NEW).]

In addition to any other powers, state plumbing inspectors shall have the right of entry during usual business hours to inspect any and all buildings and premises in the performance of their duties. They may enter any building only with the permission of the owner, occupant or person having control of the building or pursuant to an order of court. [1989, c. 483, Pt. A, §51 (AMD).]

SECTION HISTORY
1977, c. 469, §12 (RPR). 1981, c. 703, §A78 (RPR). 1983, c. 553, §46 (AMD). 1985, c. 389, §18 (AMD). 1985, c. 785, §B138 (AMD). 1989, c. 483, §A51 (AMD). 1991, c. 509, §23 (AMD). 1995, c. 397, §55 (AMD). 1999, c. 386, §L3 (AMD).

§3403. MEETING; CHAIR

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. [2013, c. 246, Pt. B, §10 (AMD).]

SECTION HISTORY
1975, c. 575, §39 (AMD). 1977, c. 469, §13 (AMD). 1981, c. 703, §A79 (AMD). 1983, c. 413, §142 (RPR). 1983, c. 553, §40 (AMD). 2007, c. 402, Pt. O, §3 (AMD). 2013, c. 246, Pt. B, §10 (AMD).

§3403-A. POWERS AND DUTIES

The board shall administer, coordinate and enforce this chapter and has the following powers and duties in addition to those otherwise set forth in this chapter. [2007, c. 402, Pt. O, §4 (AMD).]

1. **Rules.** The board may, in accordance with Title 5, chapter 375, subchapter 2, adopt rules commensurate with the authority vested in it by this chapter. These rules may include, but not be limited to, internal plumbing, licensing requirements, examinations and reciprocity of licensing with similar boards of other states that maintain standards equivalent to this State.

[2007, c. 402, Pt. O, §4 (AMD) .]

2. Hearings.

[2007, c. 402, Pt. O, §4 (RP) .]

3. Contracts.

[2007, c. 402, Pt. O, §4 (RP) .]

4. Fees.

[1999, c. 386, Pt. L, §4 (RP) .]

5. Orders.

[1999, c. 386, Pt. L, §5 (RP) .]

SECTION HISTORY
1983, c. 413, §143 (NEW). 1985, c. 389, §19 (AMD). 1989, c. 878, §§B28,29 (AMD). 1997, c. 727, §C8 (AMD). 1999, c. 386, §§L4,5 (AMD). 2007, c. 402, Pt. O, §4 (AMD).

§3403-B. PLUMBING CODE

1. Plumbing and plumbing code. The board shall adopt minimum rules relating to plumbing, including a plumbing code. All rules, including installation and inspection rules, must be consistent with this chapter and Title 30-A, chapter 185, subchapter III, except that the authority of municipalities to adopt more restrictive ordinances under Title 30-A, section 3001 is not preempted. Notwithstanding the Maine Administrative Procedure Act, the adoption of a national or international published plumbing code as a new plumbing code for the State constitutes a major substantive rule and must receive affirmative action by the Legislature before adoption. Subsequent technical amendments to any national or international published plumbing code that may be adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

[2001, c. 215, §1 (AMD) .]

2. Plumbing code violations. Any person who violates the rules adopted pursuant to this section or who violates a municipal ordinance adopted pursuant to Title 30-A, sections 4201 and 4211 must be penalized in accordance with Title 30-A, section 4452. Enforcement of the rules is the joint responsibility of the municipalities and the board. The board or a municipality may seek to enjoin violations of the rules or municipal ordinances. In the prosecution of a violation by a municipality, the court shall award reasonable attorney's fees to a municipality if that municipality is the prevailing party, unless the court finds that special circumstances make the award of fees unjust.

[1997, c. 727, Pt. C, §9 (NEW) .]

SECTION HISTORY
1997, c. 727, §C9 (NEW). 2001, c. 215, §1 (AMD).

§3404. DENIAL OR REFUSAL TO RENEW LICENSE; DISCIPLINARY ACTION; REINSTATEMENT

The board may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A for any of the reasons enumerated in Title 10, section 8003, subsection 5-A, paragraph A. [2007, c. 402, Pt. O, §5 (RPR).]

3. **Violation of law.** Any violation of this chapter or any rule adopted by the board; or

[1983, c. 413, §144 (NEW) .]

4. **Conviction of crime.** Subject to the limitations of Title 5, chapter 341, conviction of a crime which involves dishonesty or false statement or which relates directly to the practice of plumbing, or conviction of any crime for which incarceration for one year or more may be imposed.

[1983, c. 413, §144 (NEW) .]

The board, for reasons it considers sufficient, may reissue a license to any person whose license has been revoked if 2 or more members of the board vote in favor of the reissuance. [2007, c. 402, Pt. O, §5 (RPR).]

SECTION HISTORY
1973, c. 303, §3 (AMD). 1977, c. 469, §14 (RPR). 1977, c. 694, §§615,616 (AMD). 1983, c. 413, §144 (RPR). 1983, c. 553, §41 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 402, Pt. O, §5 (RPR).

§3405. DISPOSAL OF FEES

(REPEALED)

SECTION HISTORY
1983, c. 553, §42 (AMD). 1985, c. 389, §20 (AMD). 1995, c. 397, §56 (RP).

§3406. RECORDS

(REPEALED)

SECTION HISTORY
2007, c. 402, Pt. O, §6 (RP).

Subchapter 4: PLUMBING INSPECTORS

§3451. APPOINTMENT

(REPEALED)

SECTION HISTORY
1973, c. 521, §5 (RP).

§3452. COMPENSATION; DUTIES

(REPEALED)

SECTION HISTORY
1973, c. 521, §5 (RP).

§3453. APPROVING OWN WORK FORBIDDEN; ADDITIONAL INSPECTOR

(REPEALED)

SECTION HISTORY
1973, c. 521, §5 (RP).

§3454. ANNUAL REPORTS

(REPEALED)

SECTION HISTORY
1973, c. 521, §5 (RP).

Subchapter 5: LICENSES

§3501. ISSUANCE OF LICENSES

1. **License required.**

[1999, c. 386, Pt. L, §6 (RP) .]

1-A. **Application; qualifications.** The board shall issue a license to any person who files a sworn application, who passes an examination approved by the board and who meets the qualifications set forth in this section.

[1999, c. 386, Pt. L, §6 (NEW) .]

2. **Journeyman or limited license.** The board may issue a journeyman plumber or limited plumber license to persons who submit an application on a form prescribed by the board with the required fee as set under section 3501-B and who provide satisfactory evidence of the following qualifications:

A. A minimum of at least 2 years with 4,000 hours of work in the field of plumbing installations as a licensed trainee plumber under the supervision of a master plumber, or the equivalent thereof, and obtaining a passing grade as determined by the board on the journeyman's examination; or [1999, c. 386, Pt. L, §6 (AMD).]

B. A minimum of 2,000 hours of work in the field of plumbing installations as a journeyman-in-training under the supervision of a licensed master plumber, as long as the work experience is obtained within 4 years of the date upon which the applicant was issued a journeyman-in-training license. A journeyman-in-training license must be issued upon sworn application to any person who has satisfactorily completed one academic year of instruction in plumbing at a board-approved technical college or community college or a registered Department of Labor joint apprenticeship program and who has obtained a passing grade, as determined by the board on the journeyman's examination. [2005, c. 520, §1 (AMD).]

[2005, c. 520, §1 (AMD) .]

2-A. **Master plumber license.** The board may issue a master plumber license to a person who submits an application on a form prescribed by the board with the required fee as set under section 3501-B and who provides satisfactory evidence of the following qualifications:

A. A minimum of at least one year with 2,000 hours of work in the field of plumbing installations as a journeyman plumber or a minimum of at least 4 years with 8,000 hours of work in the field of plumbing installations as a trainee plumber under the supervision of a master plumber, or the equivalent; and [1987, c. 597, §11 (AMD).]

B. Obtaining a passing grade, as determined by the board on the master's examination. [1983, c. 468, §18 (NEW).]

[2003, c. 250, Pt. B, §1 (AMD) .]

2-B. **Journeyman-in-training.** The board may issue a journeyman-in-training license to a person who provides satisfactory evidence of completion of a plumbing course consisting of one year or 2 semesters at a board-approved technical college or community college and who submits the required fee set under section 3501-B. A journeyman-in-training license is valid for a single nonrenewable period of 4 years and may be issued only once to any individual.

[2003, c. 688, Pt. A, §38 (AMD) .]

3. **Trainee license.** The board may issue a trainee plumber license without examination to any person who submits a written application on a form supplied by the board with the required fee set under section 3501-B and who provides satisfactory evidence that the person has entered the employ of a licensed master plumber to assist the licensed master plumber as a plumber's trainee. Any person employed as a trainee plumber shall apply for a license within 10 business days after the day the person commences employment.

[2003, c. 250, Pt. B, §3 (AMD) .]

4. **License displayed.** All persons licensed by the board must receive a license that must be publicly displayed at the principal place of business of the plumber, if any, and a pocket card license that must be carried on the person and displayed at any time upon request.

[2007, c. 402, Pt. O, §7 (AMD) .]

5. **Examinations.**

[1999, c. 386, Pt. L, §6 (RP) .]

6. **Installation, repair or replacement of well pumps.** A person licensed under this subchapter who performs the installation, repair or replacement of a pump in a well, as defined in section 4700-E, subsection 8, shall install, repair or replace that pump in compliance with the code of performance adopted by the Maine Water Well Commission pursuant to section 4700-H, subsection 5. Any person, company, firm, partnership or corporation who installs, alters, repairs or replaces a pump system without being licensed as provided in this chapter or in violation of the code of performance, except for an apprentice pump installer as set forth in this chapter, or any person, firm, partnership or corporation who procures a license as provided in this chapter wrongfully or by fraud commits a civil violation punishable by a fine of not more than $1,000.

This subsection does not prevent a person from making pump system installations, alterations, repairs or replacements in a single-family residence occupied by that person or to be occupied by that person as a bona fide personal abode, providing the installation, alteration, repair or replacement conforms to the standards set forth in this chapter and any rules adopted by the Maine Water Well Commission or the department.

This subsection does not prevent a person from removing and replacing an existing pump for the purpose of well inspection or to test pumping if the pump and electrical system are not being modified.

[2001, c. 209, Pt. A, §4 (AMD) .]

SECTION HISTORY
1977, c. 469, §15 (RPR). 1977, c. 696, §245 (AMD). 1981, c. 470, §A153 (AMD). 1983, c. 468, §§17-19 (AMD). 1983, c. 553, §§43,44 (AMD). 1987, c. 597, §§10-12 (AMD). 1989, c. 443, §89 (AMD). 1991, c. 509, §24 (AMD). 1993, c. 25, §1 (AMD). 1999, c. 386, §L6 (AMD). 2001, c. 209, §A4 (AMD). 2003, c. 250, §§B1-3 (AMD). 2003, c. 688, §§A37,38 (AMD). 2005, c. 520, §1 (AMD). 2007, c. 402, Pt. O, §7 (AMD).

§3501-A. EXAMINATIONS

An applicant for a master, journeyman or journeyman-in-training plumbing license shall present to the board a written application for examination, containing information that the board requires, accompanied by the prescribed fee as set under section 3501-B. Examinations must be in whole or in part in writing and of a thorough and practical character commensurate with the responsibilities of the prospective license holder. [2003, c. 250, Pt. B, §4 (AMD).]

The passing grade on a master plumbing license examination may not be less than 75%. The passing grade on a journeyman plumbing license examination may not be less than 70%. A candidate failing one examination may apply for reexamination, which may be granted upon payment of a fee established by the board. Any candidate for licensure having an average grade of less than 50% may not apply for reexamination for one year. [1999, c. 386, Pt. L, §7 (NEW).]

SECTION HISTORY
1999, c. 386, §L7 (NEW). 2003, c. 250, §B4 (AMD).

§3501-B. FEES

The Director of the Office of Professional and Occupational Regulation within the Department of Professional and Financial Regulation may establish by rule fees authorized under this chapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for any one purpose may not exceed $350 biennially. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2009, c. 241, Pt. C, §1 (AMD); 2011, c. 286, Pt. B, §5 (REV).]

1. Application.

[2003, c. 250, Pt. B, §5 (RP) .]

2. Examination.

[2003, c. 250, Pt. B, §5 (RP) .]

3. Licensure.

[2003, c. 250, Pt. B, §5 (RP) .]

4. Plan review fee.

[2003, c. 250, Pt. B, §5 (RP) .]

SECTION HISTORY
1999, c. 386, §L8 (NEW). 2003, c. 250, §B5 (RPR). 2009, c. 241, Pt. C, §1 (AMD). 2011, c. 286, Pt. B, §5 (REV).

§3502. EXAMINATION

(REPEALED)

SECTION HISTORY
1965, c. 234, §3 (AMD). 1977, c. 469, §16 (RP).

§3503. MASTER PLUMBERS

(REPEALED)

SECTION HISTORY
1965, c. 234, §4 (AMD). 1977, c. 469, §17 (RP).

§3504. RENEWALS

A license expires on the date set by the commissioner pursuant to Title 10, section 8003, subsection 4 for the licensing period for which the license was issued. A license may be renewed upon receipt of an application for renewal and payment of the renewal fee as set under section 3501-B. [2009, c. 241, Pt. C, §2 (RPR).]

A license may be renewed up to 90 days after the date of its expiration upon payment of a late fee in addition to the renewal fee as set under section 3501-B. Any person who submits an application for renewal more than 90 days after the license expiration date shall pay an additional late fee as set under section 3501-B and is subject to all requirements governing new applications under this chapter, except that the board may in its discretion, giving due consideration to the protection of the public, waive examination or other requirements. Notwithstanding any other provision of this chapter, the board shall waive examination if a renewal application is made within 90 days after separation from the United States Armed Forces, under conditions other than dishonorable, by a person who has failed to renew the person's license because the person was on active duty in the United States Armed Forces; the waiver of examination may not be granted if the person served more than 4 years in the United States Armed Forces, except if the person is required by some mandatory provision to serve a longer period and the person submits satisfactory evidence to the board. [2007, c. 402, Pt. O, §8 (AMD).]

All journeyman-in-training licenses are issued for a single nonrenewable period of 4 years and are not subject to the requirements of this section. [2007, c. 402, Pt. O, §8 (AMD).]

SECTION HISTORY
1965, c. 234, §5 (AMD). 1977, c. 469, §18 (RPR). 1981, c. 703, §A80 (AMD). 1983, c. 413, §145 (AMD). 1983, c. 468, §20 (AMD). 1999, c. 386, §§L9,10 (AMD). 2003, c. 250, §B6 (AMD). 2007, c. 402, Pt. O, §8 (AMD). 2009, c. 241, Pt. C, §2 (AMD).

§3504-A. RECIPROCITY

The board shall issue a license to any person who files a sworn application and who is licensed under the laws of another state or territory of the United States as long as that state or territory has licensing standards and experience requirements at least equivalent to this State's and as long as that state or territory grants similar privileges to persons licensed under this chapter. Reciprocal licenses may not be denied on the basis of current residency. [1999, c. 386, Pt. L, §11 (NEW).]

SECTION HISTORY
1999, c. 386, §L11 (NEW).

§3505. JOURNEYMEN PLUMBERS

(REPEALED)

SECTION HISTORY
1965, c. 234, §6 (AMD). 1971, c. 263, §3 (AMD). 1975, c. 118, §3 (AMD). 1975, c. 510, §43 (AMD). 1977, c. 469, §19 (RP).

§3505-A. APPRENTICE AND TRAINEE PLUMBERS; FEES

(REPEALED)

SECTION HISTORY

1965, c. 234, §7 (NEW). 1975, c. 118, §4 (RPR). 1977, c. 469, §20 (RP).

§3506. RENEWAL

(REPEALED)

SECTION HISTORY
1965, c. 234, §8 (AMD). 1977, c. 469, §21 (RP).

§3507. CORPORATIONS, FIRMS AND PARTNERSHIPS

The board may issue a company license to a corporation, firm, partnership, limited partnership or limited liability company. Such a license may not be issued unless the applicant provides satisfactory evidence that it has a licensed master plumber directly in charge of its plumbing business activities who is an officer or full-time employee, in the case of a corporation, or a partner, member or full-time employee, in the case of a firm or partnership, and the license must be issued in the name of that master plumber. A master plumber may only be affiliated with one corporation. Upon the death or severance from the company of the licensed master plumber in whose name the company licensed is held, the company license automatically terminates 30 days from the date of that death or severance, unless the company applies for reissuance of its license in the name of another licensed master plumber who is qualified under this section. [1999, c. 386, Pt. L, §12 (AMD).]

SECTION HISTORY
1965, c. 234, §9 (AMD). 1983, c. 468, §21 (RPR). 1987, c. 597, §13 (AMD). 1999, c. 386, §L12 (AMD).

Chapter 51: PODIATRISTS

Subchapter 1: GENERAL PROVISIONS

§3551. DEFINITIONS

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings. [1993, c. 600, Pt. A, §229 (RPR).]

1. **Board.** "Board" means the Board of Licensure of Podiatric Medicine.

[1993, c. 600, Pt. A, §229 (NEW) .]

2. **License.** "License" means authorization to practice podiatric medicine.

[1993, c. 600, Pt. A, §229 (NEW) .]

3. **Podiatrist.** "Podiatrist" means an individual currently licensed to practice podiatric medicine.

[1993, c. 600, Pt. A, §229 (NEW) .]

4. **Practice of podiatric medicine.** "Practice of podiatric medicine" means the diagnosis and treatment of maladies of the human foot and ankle by medical, surgical or mechanical means. Practice of podiatric medicine includes the administration of local anesthesia in conjunction with the practice of podiatry. The use of general anesthesia is permitted in conjunction with the practice of podiatry when administered or supervised by a medical or osteopathic physician who assumes responsibility for the administration of that anesthesia to a patient being treated by a podiatrist.

[1993, c. 600, Pt. A, §229 (NEW) .]

SECTION HISTORY
1977, c. 297, (RPR). 1993, c. 600, §A229 (RPR).

§3552. LICENSURE; EXCEPTIONS; PENALTY

1. **Licensure required.** Except as otherwise provided, it is unlawful for an individual to practice or attempt to practice podiatry or to claim to be licensed as a podiatrist without first obtaining a license to practice podiatry as provided in this chapter.

[1993, c. 600, Pt. A, §230 (NEW) .]

2. **Exceptions.** This chapter does not apply to an individual licensed to practice a healing art or science who is practicing podiatric medicine in the course of practice and within the scope of that license, to a commissioned medical or surgical officer of a United States Army, United States Navy or United States Marine hospital or public health service or to the sale of nonprescription foot appliances in commercial establishments.

[1993, c. 600, Pt. A, §230 (NEW) .]

3. **Penalty.** A person who violates subsection 1 is subject to Title 10, section 8003-C.

[2007, c. 402, Pt. P, §1 (AMD) .]

SECTION HISTORY

1993, c. 600, §A230 (RPR). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 402, Pt. P, §1 (AMD).

§3552-A. PODIATRIC ASSISTANTS

1. **Podiatric assistants permitted.** This chapter may not be construed to prohibit a podiatrist from delegating to a podiatric assistant certain activities relating to medical care and treatment that are delegated by custom and usage, as long as those activities are under the supervision or control of the podiatrist, who must be present on the premises at the time the activities are performed. This section may not be construed to require the presence of the supervising and controlling podiatrist during the rendering of nondiagnostic or nontherapeutic services.

[2009, c. 112, Pt. A, §9 (AMD) .]

2. **Liability.** A podiatrist who delegates activities as described in subsection 1 to a podiatric assistant is legally liable for the medical activities of that podiatric assistant, and a podiatric assistant in this relationship is considered the podiatrist's agent. This subsection may not be construed to apply to an individual acting under a separate license accepted by the State to render services independently.

[2005, c. 77, §1 (NEW) .]

SECTION HISTORY
2005, c. 77, §1 (NEW). 2009, c. 112, Pt. A, §9 (AMD).

§3553. NARCOTICS

A licensed podiatrist may prescribe narcotic drugs for the treatment of ailments within the scope of the podiatrist's license with the approval of the Drug Enforcement Administration. [1993, c. 600, Pt. A, §231 (RPR).]

SECTION HISTORY
1979, c. 61, §1 (AMD). 1993, c. 600, §A231 (RPR).

§3554. PENALTIES

(REPEALED)

SECTION HISTORY
1993, c. 600, §A232 (RP).

§3555. REVIEW COMMITTEE IMMUNITY

Any member of a peer review committee of a state association composed of podiatrists licensed under this chapter, any staff member of such an association assisting a peer review committee and any witness or consultant appearing before or presenting information to the peer review committee is immune from civil liability for, without malice, undertaking or failing to undertake any act within the scope of the function of the committee. [1987, c. 646, §12 (NEW).]

SECTION HISTORY
1987, c. 646, §12 (NEW).

Subchapter 2: BOARD OF LICENSURE OF PODIATRIC MEDICINE HEADING: PL 1993, C. 600, PT. A, §233 (RPR)

§3601. APPOINTMENT; TERM; REMOVAL

The Board of Licensure of Podiatric Medicine established in Title 5, section 12004-A, subsection 33 consists of 4 podiatrists and a public member as defined in Title 5, section 12004-A. The podiatrists are appointed by the Governor for a term of 4 years from nominations submitted by the Podiatry Association of Maine and by other organizations and individuals. The podiatrists selected must at the time of their appointment have been actively engaged in the practice of podiatry for a period of at least 2 years. Appointment of members must comply with Title 10, section 8009. [2007, c. 402, Pt. P, §2 (AMD).]

SECTION HISTORY
1975, c. 575, §§40,41 (AMD). 1975, c. 771, §364 (AMD). 1979, c. 61, §1A (AMD). 1983, c. 176, §A18 (AMD). 1983, c. 812, §230 (AMD). 1989, c. 503, §B141 (AMD). 1993, c. 600, §A234 (AMD). 2007, c. 402, Pt. P, §2 (AMD).

§3602. MEETINGS; CHAIR

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. A license to practice podiatry may not be granted except upon the affirmative vote of a majority of the members of the board. [2013, c. 246, Pt. B, §11 (AMD).]

SECTION HISTORY
1979, c. 61, §2 (AMD). 1983, c. 812, §231 (AMD). 1993, c. 600, §A235 (AMD). 2007, c. 402, Pt. P, §3 (AMD). 2013, c. 246, Pt. B, §11 (AMD).

§3603. COMPENSATION; DISPOSITION OF FEES

(REPEALED)

SECTION HISTORY
1969, c. 27, (AMD). 1975, c. 575, §42 (AMD). 1983, c. 812, §232 (AMD). 1993, c. 600, §A236 (AMD). 1995, c. 397, §57 (RP).

§3604. REPORTS; LIAISON; LIMITATIONS

(REPEALED)

SECTION HISTORY
1977, c. 604, §30 (RPR). 1979, c. 127, §181 (AMD). 1985, c. 748, §42 (AMD). 1993, c. 600, §A237 (AMD). 1993, c. 659, §B17 (AMD). 1995, c. 462, §A62 (RPR). 2007, c. 402, Pt. P, §4 (RP).

§3605. RULES AND REGULATIONS

(REPEALED)

SECTION HISTORY
1977, c. 458, §6A (NEW). 1977, c. 694, §617 (AMD). 1989, c. 632, §1 (RP).

§3605-A. RULES

(REPEALED)

SECTION HISTORY

1989, c. 632, §2 (NEW). 1993, c. 600, §A238 (RP).

§3605-B. POWERS AND DUTIES OF THE BOARD

In addition to powers and duties otherwise provided by law, the board has the following powers and duties: [1993, c. 600, Pt. A, §239 (NEW).]

1. **Licenses.** Examine and issue and renew the licenses of qualified applicants;

[1993, c. 600, Pt. A, §239 (NEW) .]

2. **Continuing education.** Adopt standards for continuing education necessary to maintain licensure;

[1993, c. 600, Pt. A, §239 (NEW) .]

3. **Rules.** Adopt rules in accordance with the Maine Administrative Procedure Act, as it determines necessary to carry out the purposes of this chapter; and

[2011, c. 190, §7 (AMD) .]

4. **Conduct investigations and hold hearings.**

[2007, c. 402, Pt. P, §5 (RP) .]

5. **Contracts.**

[1995, c. 397, §58 (RP) .]

6. **Records.**

[2007, c. 402, Pt. P, §6 (RP) .]

7. **Podiatrist health program.** The board may establish protocols for the operation of a professional review committee as defined in Title 24, section 2502, subsection 4-A. The protocols must include the committee's reporting information the board considers appropriate regarding reports received, contracts or investigations made and the disposition of each report, as long as the committee is not required to disclose any personally identifiable information. The protocol may not prohibit an impaired podiatrist from seeking alternative forms of treatment.

The board has the power to contract with other agencies, individuals, firms or associations for the conduct and operation of a podiatrist health program operated by a professional review committee.

[2011, c. 190, §8 (NEW) .]

SECTION HISTORY
1993, c. 600, §A239 (NEW). 1995, c. 397, §58 (AMD). 2007, c. 402, Pt. P, §§5, 6 (AMD). 2011, c. 190, §§7, 8 (AMD).

§3606. BUDGET

(REPEALED)

SECTION HISTORY
1977, c. 604, §31 (NEW). 1985, c. 748, §42 (AMD). 1993, c. 659, §B17 (AMD). 1995, c. 397, §59 (RP).

Subchapter 3: LICENSURE REQUIREMENTS
HEADING: PL 1993, C. 600, PT. A, §240 (RPR)

§3651. EXAMINATION; REQUIREMENTS

(REPEALED)

SECTION HISTORY
1969, c. 433, §88 (AMD). 1971, c. 598, §76 (AMD). 1979, c. 61, §3 (AMD). 1983, c. 378, §56 (AMD). 1993, c. 600, §A241 (RP).

§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-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.

[2007, c. 621, §8 (AMD); 2007, c. 695, Pt. B, §12 (AMD) .]

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-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 3656 or Title 10, section 8003, subsection 5-A, paragraph A. [2007, c. 695, Pt. B, §13 (AMD).]

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 3656 or Title 10, section 8003, subsection 5-A, paragraph 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. [2007, c. 695, Pt. B, §13 (AMD).]

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. [1993, c. 600, Pt. A, §242 (AMD); 1993, c. 600, Pt. A, §243 (AFF).]

[2007, c. 621, §8 (AMD); 2007, c. 695, Pt. B, §13 (AMD) .]

SECTION HISTORY
1993, c. 278, §1 (NEW). 1993, c. 278, §4 (AFF). 1993, c. 600, §A242 (AMD). 1993, c. 600, §A243 (AFF). 2007, c. 402, Pt. P, §§7, 8 (AMD). 2007, c. 621, §8 (AMD). 2007, c. 695, Pt. B, §§12, 13 (AMD).

§3651-B. EXAMINATION; REQUIREMENTS

(REPEALED)

SECTION HISTORY
1993, c. 600, §A244 (NEW). 2007, c. 402, Pt. P, §9 (RP).

§3651-C. EXAMINATION; REQUIREMENTS

Except as otherwise provided in this chapter, an individual must pass an examination approved by the board before engaging in the practice of podiatry. An applicant shall submit an application for a license to practice podiatry containing satisfactory proof that the applicant: [2007, c. 402, Pt. P, §10 (NEW).]

1. **Minimum age.** Is at least 18 years of age;

[2007, c. 402, Pt. P, §10 (NEW) .]

2. **Graduation.** Has received a certificate of graduation from an accredited college of podiatric medicine, recognized by the Council of Education of the American Podiatry Association or its successor or other organization approved by the board; and

[2007, c. 402, Pt. P, §10 (NEW) .]

3. **Examination.** Has passed an examination approved by the board.

[2007, c. 402, Pt. P, §10 (NEW) .]

SECTION HISTORY
2007, c. 402, Pt. P, §10 (NEW).

§3652. FEES; REEXAMINATION; LICENSE RENEWAL

The Director of the Office of Professional and Occupational Regulation within the Department of Professional and Financial Regulation may establish by rule fees for purposes authorized under this chapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for any one purpose may not exceed $600 annually. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [2007, c. 402, Pt. P, §11 (AMD); 2011, c. 286, Pt. B, §5 (REV).]

An applicant for an examination for a license to practice podiatry shall pay, at the time of filing an application, a license application fee and a license fee as set under this section plus actual costs of examination administration. An applicant who fails to pass an examination is entitled to a reexamination within 6 months upon the payment of a fee, but only 2 such reexaminations are permitted. Podiatrists licensed in another state and applying for a license to practice in this State without examination shall pay an application fee and a license fee. [2007, c. 402, Pt. P, §11 (AMD).]

A doctor of podiatric medicine licensed to practice podiatric medicine and surgery within this State shall apply on or before July 1st of every year or at such other time as the Commissioner of Professional and Financial Regulation may designate, to the board for a license renewal and pay the renewal fee as set under this section. [2007, c. 402, Pt. P, §11 (AMD).]

On or before July 1st of every year, an applicant who is practicing podiatric medicine and surgery in this State shall include satisfactory evidence to the board that in the preceding license period the applicant has completed a program of continuing education as prescribed in the rules of the board. [2007, c. 1, §18 (COR).]

An application for license renewal made not more than 90 days after the date of expiration must include a late fee in addition to the renewal fee as set under this section. An application received more than 90 days but less than 2 years after the expiration date is subject to the requirements for new applicants as well as continuing education requirements, if applicable, and a late fee, renewal fee and additional late fee as set under this section, except that the board, giving due consideration to the health, welfare and safety of the

citizens of the State, may waive the examination requirement at its discretion. A license that has been expired for over 2 years may not be renewed and must be processed as a new application. [2007, c. 402, Pt. P, §11 (AMD).]

SECTION HISTORY
1977, c. 267, §1 (RPR). 1981, c. 206, (RPR). 1993, c. 347, §1 (AMD). 1993, c. 600, §A245 (AMD). 1999, c. 257, §1 (AMD). 1999, c. 685, §12 (AMD). RR 2007, c. 1, §18 (COR). 2007, c. 402, Pt. P, §11 (AMD). 2011, c. 286, Pt. B, §5 (REV).

§3653. USE OF TITLE

An applicant who satisfactorily meets the requirements for license to practice podiatry, as provided in this chapter, may be granted a license by the board that entitles the individual to whom it is granted to practice podiatry in this State. A podiatrist licensed in accordance with this chapter may use the word "Doctor" or the letters "Dr." when followed by the word "Podiatrist" or "Chiropodist," or the designation of the degree "D.P.M." [2009, c. 112, Pt. A, §10 (AMD).]

SECTION HISTORY
1993, c. 600, §A246 (AMD). 2009, c. 112, Pt. A, §10 (AMD).

§3654. RECIPROCITY; ENDORSEMENT; RESIDENCY REQUIREMENT

The board may issue a license to practice podiatry by endorsement to an applicant who has successfully passed the written examination of another state or of a national certifying agency in podiatry recognized by the board if the written examination of the other state or national certifying agency was equivalent to its own examination and if the applicant satisfies in all other respects the requirements for licensure in section 3651-A. An applicant for licensure by endorsement who graduated after January 1, 1991 from podiatric medical school under section 3651-A shall provide the board evidence of satisfactory completion of at least one year of postgraduate clinical training in a podiatric residency training program under section 3651-A. The application to the board must be accompanied by the application fee and license fee as set under section 3652. [2007, c. 402, Pt. P, §12 (AMD).]

SECTION HISTORY
1977, c. 267, §2 (AMD). 1983, c. 378, §57 (AMD). 1993, c. 278, §2 (AMD). 1993, c. 278, §4 (AFF). 1993, c. 600, §A247 (RPR). 1999, c. 257, §§2,3 (AMD). 1999, c. 685, §13 (AMD). 2007, c. 402, Pt. P, §12 (AMD).

§3655. SUSPENSION OR REVOCATION OF LICENSE

(REPEALED)

SECTION HISTORY
1973, c. 303, §3 (AMD). 1977, c. 458, §§7-10 (AMD). 1977, c. 694, §618 (AMD). 1979, c. 61, §§4,5 (AMD). 1981, c. 25, (AMD). 1983, c. 378, §58 (RP).

§3655-A. DISCIPLINARY ACTIONS

(REPEALED)

SECTION HISTORY
1983, c. 378, §59 (NEW). 1993, c. 600, §A248 (AMD). 1999, c. 547, §B68 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 402, Pt. P, §13 (RP).

§3656. DENIAL OR REFUSAL TO RENEW LICENSE; DISCIPLINARY ACTION; INFORMAL CONFERENCE

In addition to the grounds enumerated in Title 10, section 8003, subsection 5-A, paragraph A, the board may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A for: [2007, c. 402, Pt. P, §14 (NEW).]

1. **Misuse of alcohol, drugs or other substances.** Misuse of alcohol, drugs or other substances that has resulted or may result in the applicant or licensee performing services in a manner that endangers the health or safety of the licensee's patients;

[2013, c. 105, §8 (AMD) .]

2. **Mental or physical condition.** A professional diagnosis of a mental or physical condition that has resulted or may result in the applicant or licensee performing services in a manner that endangers the health or safety of the podiatrist's patients;

[2007, c. 402, Pt. P, §14 (NEW) .]

3. **False advertising.** Engaging in false, misleading or deceptive advertising; or

[2007, c. 402, Pt. P, §14 (NEW) .]

4. **Unlawful prescription of controlled substance.** Prescribing narcotic or hypnotic or other drugs listed as controlled substances by the federal Drug Enforcement Administration for other than accepted therapeutic purposes.

[2007, c. 402, Pt. P, §14 (NEW) .]

SECTION HISTORY
2007, c. 402, Pt. P, §14 (NEW). 2013, c. 105, §8 (AMD). 2013, c. 217, Pt. L, §1 (AMD).

Chapter 53: PRACTICE OF HEALING ART OR SCIENCE

Subchapter 1: GENERAL PROVISIONS

§3701. EXEMPTIONS

(REPEALED)

SECTION HISTORY
1983, c. 176, §A19 (RP).

§3702. PENALTIES

(REPEALED)

SECTION HISTORY
1983, c. 176, §A19 (RP).

Subchapter 2: REGISTRATION

§3751. REGISTRATION BOARDS; RELIGIOUS TENETS

(REPEALED)

SECTION HISTORY
1983, c. 176, §A19 (RP).

Chapter 54: PRIVATE SECURITY GUARDS

§3761. DEFINITIONS

(REPEALED)

SECTION HISTORY
1977, c. 508, §1 (NEW). 1981, c. 113, §1 (RP).

§3762. LICENSING AUTHORITY; ESTABLISHED

(REPEALED)

SECTION HISTORY
1977, c. 508, §1 (NEW). 1981, c. 113, §1 (RP).

§3763. SUBPOENAS; OATHS; CONTEMPT POWERS

(REPEALED)

SECTION HISTORY
1977, c. 508, §1 (NEW). 1981, c. 113, §1 (RP).

§3764. PUBLIC NOTICE OF PROPOSAL RULE-MAKING

(REPEALED)

SECTION HISTORY
1977, c. 508, §1 (NEW). 1981, c. 113, §1 (RP).

§3765. REQUIREMENT FOR CONTRACT SECURITY COMPANY LICENSE

(REPEALED)

SECTION HISTORY
1977, c. 508, §1 (NEW). 1981, c. 113, §1 (RP).

§3766. FORM OF APPLICATION

(REPEALED)

SECTION HISTORY
1977, c. 508, §1 (NEW). 1981, c. 113, §1 (RP).

§3767. LICENSE QUALIFICATIONS

(REPEALED)

SECTION HISTORY
1977, c. 508, §1 (NEW). 1981, c. 113, §1 (RP).

§3768. LICENSE APPLICATION; INVESTIGATION

(REPEALED)

SECTION HISTORY
1977, c. 508, §1 (NEW). 1981, c. 113, §1 (RP).

§3769. GROUNDS FOR DENIAL OF APPLICATION

(REPEALED)

SECTION HISTORY
1977, c. 508, §1 (NEW). 1981, c. 113, §1 (RP).

§3770. PROCEDURE FOR APPROVAL OR DENIAL OF APPLICATION; HEARINGS

(REPEALED)

SECTION HISTORY
1977, c. 508, §1 (NEW). 1981, c. 113, §1 (RP).

§3771. RENEWAL OF LICENSE

(REPEALED)

SECTION HISTORY
1977, c. 508, §1 (NEW). 1981, c. 113, §1 (RP).

§3772. APPLICATION; LICENSE AND RENEWAL FEES

(REPEALED)

SECTION HISTORY
1977, c. 508, §1 (NEW). 1981, c. 113, §1 (RP).

§3773. LICENSE TRANSFERABILITY

(REPEALED)

SECTION HISTORY
1977, c. 508, §1 (NEW). 1981, c. 113, §1 (RP).

§3774. LICENSE REVOCATION; HEARINGS; APPEALS; NOTICES

(REPEALED)

SECTION HISTORY
1977, c. 508, §1 (NEW). 1981, c. 113, §1 (RP).

§3775. FORM OF LICENSE AND POSTING

(REPEALED)

SECTION HISTORY
1977, c. 508, §1 (NEW). 1981, c. 113, §1 (RP).

§3776. CHANGE IN STATUS OF LICENSEE

(REPEALED)

SECTION HISTORY
1977, c. 508, §1 (NEW). 1981, c. 113, §1 (RP).

§3777. UNIFORMS AND EQUIPMENT

(REPEALED)

SECTION HISTORY
1977, c. 508, §1 (NEW). 1981, c. 113, §1 (RP).

§3778. BONDING REQUIREMENTS

(REPEALED)

SECTION HISTORY
1977, c. 508, §1 (NEW). 1981, c. 113, §1 (RP).

§3779. UNLAWFUL ACTS

(REPEALED)

SECTION HISTORY
1977, c. 508, §1 (NEW). 1981, c. 113, §1 (RP).

§3780. PROHIBITED ACTIVITIES IN CONNECTION WITH STRIKES; LABOR DISPUTES

(REPEALED)

SECTION HISTORY
1977, c. 508, §1 (NEW). 1981, c. 113, §1 (RP).

§3781. JUDICIAL REVIEW

(REPEALED)

SECTION HISTORY
1977, c. 508, §1 (NEW). 1981, c. 113, §1 (RP).

§3782. APPLICATION

(REPEALED)

SECTION HISTORY
1977, c. 508, §1 (NEW). 1981, c. 113, §1 (RP).

§3783. SEVERABILITY CLAUSE

(REPEALED)

SECTION HISTORY
1977, c. 508, §1 (NEW). 1981, c. 113, §1 (RP).

Chapter 55: PRIVATE DETECTIVES

§3801. LICENSE; BOND; ADVERTISING; FEE

(REPEALED)

SECTION HISTORY
1971, c. 582, §2 (RP).

§3802. AUTHORITY TO ARREST; COMPENSATION

(REPEALED)

SECTION HISTORY
1971, c. 582, §2 (RP).

Chapter 55-A: PRIVATE DETECTIVES

§3803. DEFINITIONS

(REPEALED)

SECTION HISTORY
1971, c. 582, §1 (NEW). 1975, c. 419, (AMD). 1977, c. 508, §2 (RP).

§3804. WHEN LICENSE REQUIRED; EXCEPTIONS; PENALTIES

(REPEALED)

SECTION HISTORY
1971, c. 582, §1 (NEW). 1973, c. 292, §1 (AMD). 1977, c. 508, §2 (RP).

§3804-A. CONSTRUCTION

(REPEALED)

SECTION HISTORY
1971, c. 582, §1 (NEW). 1975, c. 740, §131 (AMD). 1975, c. 744, §1 (AMD). 1977, c. 78, §183 (RPR). 1977, c. 508, §2 (RP).

§3805. APPLICATION FOR LICENSE

(REPEALED)

SECTION HISTORY
1971, c. 582, §1 (NEW). 1975, c. 579, §§18,19 (AMD). 1975, c. 744, §2 (AMD). 1977, c. 508, §2 (RP).

§3806. TO WHOM LICENSE MAY BE GRANTED; TERM AND CONTENT; REVOCATION; RENEWAL

(REPEALED)

SECTION HISTORY
1971, c. 582, §1 (NEW). 1975, c. 579, §20 (AMD). 1975, c. 744, §§3,4 (AMD). 1975, c. 771, §§365,366 (AMD). 1977, c. 78, §184 (AMD). 1977, c. 508, §2 (RP).

§3807. FEES; BONDS

(REPEALED)

SECTION HISTORY
1971, c. 582, §1 (NEW). 1973, c. 292, §2 (AMD). 1975, c. 744, §§5-7 (AMD). 1977, c. 508, §2 (RP).

§3808. EMPLOYMENT OF ASSISTANTS; PENALTY FOR MAKING FALSE STATEMENTS OR REPORTS OR DIVULGING INFORMATION

(REPEALED)

SECTION HISTORY

1971, c. 582, §1 (NEW). 1973, c. 292, §3 (AMD). 1975, c. 744, §8 (AMD). 1977, c. 508, §2 (RP).

§3809. PROHIBITED ACTIVITIES IN CONNECTION WITH STRIKES, LABOR DISPUTES, ETC.

(REPEALED)

SECTION HISTORY
1971, c. 582, §1 (NEW). 1973, c. 292, §4 (AMD). 1977, c. 508, §2 (RP).

Chapter 56: PSYCHOLOGISTS

Subchapter 1: GENERAL PROVISIONS

§3811. DEFINITION OF PRACTICE OF PSYCHOLOGY

Two levels of psychological practice are defined for the purpose of this chapter. Such levels shall be known and referred to as "psychological examiner" and "psychologist". [1967, c. 544, §82 (NEW).]

1. **Psychological examiner.** A person practices as a "psychological examiner" within the meaning of this chapter when he holds himself out to be a psychological examiner, or renders to individuals or to the public for remuneration services involving the application of recognized principles, methods and procedures of the science and profession of psychology, but limited to interviewing or administering and interpreting tests of mental abilities, aptitudes, interests and personality characteristics, for such purposes as psychological evaluation or for educational or vocational selection, guidance or placement. A psychological examiner may provide intervention, such as consultation, behavior management or social skills training under the supervision of a licensed psychologist or as otherwise provided in law or rules issued in accordance with this chapter. A psychological examiner may not provide psychotherapy services under any circumstances. The State Board of Examiners of Psychologists shall establish rules for supervision of psychological examiners for intervention services.

[1985, c. 481, Pt. A, §55 (AMD) .]

2. **Psychologist.** A person practices as a "psychologist" within the meaning of this chapter when he holds himself out to be a psychologist, or renders to individuals or to the public for remuneration any service involving the application of recognized principles, methods and procedures of the science and profession of psychology. Services which may be provided by psychologists include diagnosing, assessing and treating mental, emotional and psychological illness, disorders, problems and concerns and evaluation and treatment of vocational, social, educational, behavioral, intellectual and learning and cognitive disorders. These functions are performed through recognized psychological techniques such as, but not limited to, psychological testing, psychological interviews, psychological assessments, psychotherapy, personality counseling, behavior modification, cognitive therapies, learning therapies, biofeedback, hypnotherapy and psychological consultation to individuals and organizations.

[1985, c. 481, Pt. A, §55 (AMD) .]

3. **Limitation.** Nothing in this chapter shall be construed as permitting the practice of medicine as defined in section 3270 by psychological examiners or psychologists.

[1977, c. 564, §124 (AMD) .]

SECTION HISTORY
1967, c. 544, §82 (NEW). 1977, c. 564, §124 (AMD). 1985, c. 481, §A55 (AMD).

§3811-A. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2007, c. 402, Pt. Q, §1 (NEW).]

1. **Board.** "Board" means the State Board of Examiners of Psychologists.

[2007, c. 402, Pt. Q, §1 (NEW) .]

2. **Mental illness.** "Mental illness" means a clinically significant behavioral or psychological syndrome or pattern that occurs in an individual and that is typically associated with either a painful symptom or impairment in one or more important areas of functioning.

[2007, c. 402, Pt. Q, §1 (NEW) .]

SECTION HISTORY
1985, c. 481, §A56 (NEW). 2007, c. 402, Pt. Q, §1 (RPR).

§3812. UNLICENSED PRACTICE; EXEMPTIONS

An individual or organization may not profess to be or be presented to the public by any title incorporating the name "psychological," "psychologist" or "psychology," other than those so licensed by this chapter, except that any psychological scientist employed by a recognized research laboratory, college, university or state or federal agency may use the title conferred upon the scientist by the administration of such or equivalent laboratory, college, university or state or federal agency. Nothing in this section may be construed as permitting such persons to offer their service to any other persons or organizations as consultants or to accept remuneration for any psychological services other than that of their institutional salaries unless they have been licensed under this chapter. Visiting lecturers from recognized laboratories, colleges or universities are exempt from this section and may utilize their academic research title when presenting lectures to similar institutions or organizations. Students of psychology, psychological interns and other persons preparing for the profession of psychological examiner or psychologist under qualified supervision in recognized training institutions or facilities may be designated by such titles as "psychological intern", "psychological trainee" or others clearly indicating such training status. [2007, c. 402, Pt. Q, §2 (AMD).]

The use of occasional services of qualified consultant psychologists from another state or jurisdiction or the use of the services of organizations from another state or jurisdiction employing qualified psychologists does not constitute the unlawful practice of psychology. [2007, c. 402, Pt. Q, §2 (AMD).]

SECTION HISTORY
1967, c. 544, §82 (NEW). 2007, c. 402, Pt. Q, §2 (AMD).

§3812-A. DELEGATION AUTHORIZED

1. **Delegation authorized.** This chapter may not be construed to prohibit a psychologist from delegating to an individual the administration and observation of tests and certain activities relating to the practice of psychology, as long as those activities are under the supervision and control of the psychologist. "Supervision and control" may not be construed to require the personal presence of the supervising and controlling psychologist at the place where those activities take place, unless a physical presence is necessary to provide patient care of the same quality as provided by the psychologist. The board may adopt rules identifying delegated activities and appropriate levels of supervision in the practice setting. Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A. The activities delegated by a psychologist under this subsection may not include the interpretation of test results and diagnosing and treating mental, emotional and psychological illnesses and disorders.

[2009, c. 112, Pt. A, §11 (NEW) .]

2. **Responsibility.** A psychologist who delegates activities as described in subsection 1 to an individual is legally and ethically responsible for all of the professional activities of that individual, and the individual in this relationship is considered the psychologist's agent. This subsection may not be construed to apply to an individual acting under a separate license accepted by the State to render services independently.

[2009, c. 112, Pt. A, §11 (NEW) .]

SECTION HISTORY
2009, c. 112, Pt. A, §11 (NEW).

§3813. LIMITATIONS

Nothing in this chapter shall be construed to limit the professional pursuits of teachers and counselors in recognized public and private schools. Students of psychology, psychological interns and other persons preparing for the profession of psychological examiner or psychologist may perform as a part of their training the functions specified in section 3811, but only under the supervision of a licensed psychologist. No industrial or business firm or corporation may sell or offer to the public or to other firms or corporations for remuneration any psychological services as specified in section 3811, unless such services are performed or supervised by individuals duly and appropriately licensed under this chapter as "psychologist". [1967, c. 544, §82 (NEW).]

SECTION HISTORY
1967, c. 544, §82 (NEW).

§3814. PENALTIES FOR UNLICENSED PRACTICE

Persons who hold themselves out to the public as psychologists or psychological examiners or engage in psychological practice as defined in this chapter and do not then possess in full force valid licenses to practice as psychological examiners or psychologists under this chapter are subject to the provisions of Title 10, section 8003-C. [2007, c. 402, Pt. Q, §3 (AMD).]

SECTION HISTORY
1967, c. 544, §82 (NEW). 1983, c. 413, §146 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 402, Pt. Q, §3 (AMD).

§3815. PRIVILEGED COMMUNICATIONS

(REPEALED)

SECTION HISTORY
1967, c. 544, §82 (NEW). 1977, c. 564, §125 (RP).

§3816. CODE OF ETHICS

The board shall adopt rules establishing a code of ethics in keeping with those standards established by the American Psychological Association or its successor or other organization approved by the board to govern appropriate practices or behavior as referred to in this chapter. [2007, c. 402, Pt. Q, §4 (AMD).]

SECTION HISTORY
1967, c. 544, §82 (NEW). 1983, c. 413, §147 (AMD). 2007, c. 402, Pt. Q, §4 (AMD).

§3817. SERVICES TO MINORS FOR DRUG ABUSE

Any person licensed under this chapter who renders psychological services to a minor for problems associated with the abuse of drugs or alcohol is under no obligation to obtain the consent of said minor's parent or guardian or to inform such parent or guardian of such services. Nothing in this section shall be construed so as to prohibit the licensed person rendering such services from informing such parent or guardian. For purposes of this section "abuse of drugs" means the use of drugs solely for their stimulant, depressant or hallucinogenic effect upon the higher functions of the central nervous system and not as a therapeutic agent recommended by a practitioner in the course of medical treatment. [1979, c. 96, §4 (AMD).]

SECTION HISTORY
1971, c. 237, §4 (NEW). 1973, c. 145, §4 (RPR). 1979, c. 96, §4 (AMD).

§3818. REPORTS

(REPEALED)

SECTION HISTORY
1975, c. 767, §43 (NEW). 2007, c. 402, Pt. Q, §5 (RP).

§3819. REVIEW COMMITTEE IMMUNITY

Any member of a peer review committee of a state association composed of psychologists licensed under this chapter, any staff member of such an association assisting a peer review committee and any witness or consultant appearing before or presenting information to the peer review committee is immune from civil liability for, without malice, undertaking or failing to undertake any act within the scope of the function of the committee. [1987, c. 646, §13 (NEW).]

SECTION HISTORY
1987, c. 646, §13 (NEW).

Subchapter 2: BOARD OF EXAMINERS

§3821. MEMBERSHIP; TERMS; VACANCIES

The State Board of Examiners of Psychologists, as established by Title 5, section 12004-A, subsection 34,consists of 9 members who are appointed by the Governor to serve a term of 3 years. Two members of the board must be public members as defined in Title 5, section 12004-A. Seven members of the board must be licensed psychologists or psychological examiners and insofar as possible be representative of the field of psychology. Appointments of members must comply with Title 10, section 8009. Before the filling of any vacancies of professional or public members, the Governor may solicit recommendations. A board member may be removed by the Governor for cause. [2007, c. 402, Pt. Q, §6 (AMD).]

SECTION HISTORY
1967, c. 544, §82 (NEW). 1975, c. 575, §43 (RPR). 1981, c. 501, §§66,67 (AMD). 1983, c. 413, §148 (AMD). 1983, c. 812, §233 (AMD). 1985, c. 481, §A57 (AMD). 1989, c. 503, §B142 (AMD). 1993, c. 600, §A249 (AMD). 2007, c. 402, Pt. Q, §6 (AMD).

§3821-A. CONSULTANT

The board may contract with a psychologist or psychologists or other qualified individual or individuals familiar with the board's purpose and operation who are available as needed to respond to inquiries from applicants for licensure, primarily inquiries regarding the component of the licensure process dealing with credentials review. The contractor shall advise, consult and assist the board with the credentials review process, as well as other matters as needed. [1999, c. 386, Pt. M, §1 (AMD).]

SECTION HISTORY
1987, c. 395, §A173 (NEW). 1999, c. 386, §M1 (AMD).

§3822. MEETINGS; CHAIR

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. [2013, c. 246, Pt. B, §12 (AMD).]

SECTION HISTORY
1967, c. 544, §82 (NEW). 1975, c. 575, §44 (AMD). 1975, c. 767, §44 (AMD). 1983, c. 413, §149 (RPR). 1983, c. 812, §234 (AMD). 1985, c. 481, §A58 (AMD). 2007, c. 402, Pt. Q, §7 (AMD). 2013, c. 246, Pt. B, §12 (AMD).

§3823. GRANTS

The board may accept grants from foundations or institutions. These grants must be deposited in the State Treasury to the credit of the board. [1995, c. 397, §60 (AMD).]

SECTION HISTORY
1967, c. 544, §82 (NEW). 1983, c. 413, §150 (AMD). 1985, c. 389, §21 (AMD). 1995, c. 397, §60 (AMD).

§3824. POWERS AND DUTIES

The board shall have the following powers and duties, in addition to those otherwise set forth in this chapter. [1983, c. 413, §151 (NEW).]

1. **Licenses.** The board shall evaluate the qualifications of applicants for licensure under this chapter.

[2007, c. 402, Pt. Q, §8 (AMD) .]

2. **Rules.** The board may, in accordance with procedures established by Title 5, chapter 375, subchapter 2, adopt such rules as may be reasonably necessary for the proper performance of its duties and the administration of this chapter.

[2007, c. 402, Pt. Q, §8 (AMD) .]

3. **Hearings.**

[2007, c. 402, Pt. Q, §8 (RP) .]

4. **Assistants; contracts.**

[1995, c. 397, §61 (RP) .]

5. **Temporary licensure.** The board shall adopt rules for the granting of a temporary license to enable psychologists to practice in this State under supervision pending such examination as the board may require. An applicant who possesses at least 1,500 hours of postdoctoral experience and fulfills all the requirements for licensure, with the exception of any required examination, may apply to the board for a temporary license. Upon receiving a completed application and fee as set under section 3833-A, the board shall issue a temporary license that entitles the applicant to practice as a psychologist or psychological examiner under supervision while completing the requirements for permanent licensure. The temporary license is effective for one year.

[2009, c. 415, Pt. A, §18 (RPR) .]

6. **Continuing education.** The board shall establish in rules requirements for continuing education. The board shall require the applicant for license renewal to present evidence of the applicant's satisfactory completion of continuing professional education in accordance with rules adopted by the board.

[2007, c. 402, Pt. Q, §8 (AMD) .]

SECTION HISTORY
1983, c. 413, §151 (NEW). 1983, c. 553, §46 (AMD). 1985, c. 481, §§A59,60 (AMD). 1991, c. 144, §1 (AMD). RR 1993, c. 1, §88 (COR). 1995, c. 397, §61 (AMD). 2007, c. 10, §1 (AMD). 2007, c. 402, Pt. Q, §8 (AMD). 2009, c. 415, Pt. A, §18 (AMD).

Subchapter 3: LICENSURE

§3831. LICENSURE; QUALIFICATIONS

1. **Psychological examiner.** A candidate for this license shall furnish the board with satisfactory evidence that the candidate is trustworthy and competent to practice as a psychological examiner in such manner as to safeguard the interests of the public; has had a master's degree reflecting comprehensive training in psychology from an accredited educational institution recognized by the board as maintaining satisfactory standards; has had at least one year of full-time supervised experience in psychology of a type considered by the board to be qualifying in nature; is competent as a psychological examiner as shown by passing such examinations, written or oral, or both, as the board determines necessary; is not considered by the board to be engaged in unethical practice; and has not within the preceding 6 months failed an examination.

[2007, c. 402, Pt. Q, §9 (AMD) .]

2. **Psychologist.** A candidate for this license shall furnish the board with satisfactory evidence that the candidate is trustworthy and competent to practice as a psychologist in such manner as to safeguard the interest of the public; has received a doctorate degree reflecting comprehensive training in psychology from an accredited institution recognized by the board as maintaining satisfactory standards, at the time the degree was granted; has had at least 2 years of experience in psychology of a type considered by the board to be qualifying in nature; is competent in psychology, as shown by passing such examinations as the board determines necessary; is not considered by the board to be engaged in unethical practice; and has not within the preceding 6 months failed an examination. The board shall recognize that valid comprehensive training in psychology must be received in or accepted by a single program, but may be obtained through a degree given by administrative units other than a department of psychology, including programs approved by the National Association of School Psychologists or the American Psychological Association designation program or their successors or other organizations approved by the board. The board shall adopt a list of these programs. Individuals with degrees from programs not on that list must be evaluated on a case-by-case basis.

Beginning January 1, 2020, a candidate for initial licensure shall furnish the board with satisfactory evidence that the candidate has successfully completed a minimum of 3 hours of course work in family or intimate partner violence screening and referral and intervention strategies, including knowledge of community

resources, cultural factors, evidence-based risk assessment and same-gender abuse dynamics. A candidate may fulfill this requirement through course work taken in fulfillment of other educational requirements for licensure or through separate course work provided through any combination of contact hours, Internet hours and distance learning programs, as evidenced by certification from an accredited educational institution. The board shall accept certification from the accredited educational institution from which the applicant is a graduate that verifies the applicant's satisfaction of this requirement within the applicant's completed course curriculum. A candidate for initial licensure that is unable to demonstrate completion of the requirement of 3 hours of course work at the time the initial application is submitted shall demonstrate to the board that this requirement has been fulfilled upon the candidate's first application for license renewal.

[2013, c. 262, §1 (AMD) .]

SECTION HISTORY
1967, c. 544, §82 (NEW). 1983, c. 413, §152 (AMD). 1983, c. 468, §22 (AMD). 1983, c. 816, §A34 (RPR). 1985, c. 481, §A61 (AMD). 2007, c. 402, Pt. Q, §9 (AMD). 2013, c. 262, §1 (AMD).

§3832. EXAMINATION

Examination of applicants for a license to practice psychology or as psychological examiner shall be made by the Board of Examiners of Psychologists at least once a year according to methods and in such subject fields as may be deemed by the board to be the most practical and expeditious to test the applicant's qualifications. The examinations shall include the basic psychological sciences. The board shall require the examinations to be written or oral, or both, provided that in any written examination each applicant shall be designated by a number instead of his name so that his identity shall not be disclosed to the members of the board until the examination papers have been graded. [1983, c. 468, §23 (AMD).]

SECTION HISTORY
1967, c. 544, §82 (NEW). 1983, c. 468, §23 (AMD).

§3833. APPLICATION AND EXAMINATION FEES

An application fee under section 3833-A and an examination fee may be established by the director under section 3833-A. No part of these fees is returnable under any circumstances other than failure of the board to hold examinations at the time originally announced. The examination fee only may be returned at the option of the candidate if the examination is not held at the time originally announced. [2001, c. 323, §23 (AMD).]

SECTION HISTORY
1967, c. 544, §82 (NEW). 1973, c. 220, §1 (AMD). 1977, c. 186, (AMD). 1979, c. 189, §1 (AMD). 1983, c. 413, §153 (RPR). 1999, c. 386, §M2 (AMD). 2001, c. 323, §23 (AMD).

§3833-A. FEES

The Director of the Office of Professional and Occupational Regulation within the Department of Professional and Financial Regulation may establish by rule fees for purposes authorized under this chapter in amounts that are reasonable for their respective purposes, except that the fee for any one purpose may not exceed $500 biennially. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A. [2001, c. 323, §24 (NEW); 2011, c. 286, Pt. B, §5 (REV).]

SECTION HISTORY
2001, c. 323, §24 (NEW). 2011, c. 286, Pt. B, §5 (REV).

§3834. ISSUANCE OF LICENSE

(REPEALED)

SECTION HISTORY
1967, c. 544, §82 (NEW). 1983, c. 413, §154 (AMD). 2007, c. 402, Pt. Q, §10 (RP).

§3835. LICENSE RENEWAL

Licenses issued under this chapter expire biennially or as established by the Commissioner of Professional and Financial Regulation. A person licensed under this chapter shall submit, on or before the established expiration date, an application for license renewal together with the renewal fee as set under section 3833-A. Beginning January 1, 2020, a person that submits an application for license renewal shall demonstrate to the satisfaction of the board a one-time successful completion of a minimum of 3 contact hours of course work in family or intimate partner violence screening and referral and intervention strategies, including knowledge of community resources, cultural factors, evidence-based risk assessment and same-gender abuse dynamics. The board may accept equivalent courses in spousal or partner abuse screening and referral and intervention strategies or equivalent teaching or practice experience completed prior to January 1, 2020 in satisfaction of this requirement. Continuing education courses taken pursuant to this paragraph may be used to satisfy the licensee's required hours of continuing education. [2013, c. 262, §2 (AMD).]

A license may be renewed up to 90 days after the date of expiration upon payment of a late fee in addition to the renewal fee as set under section 3833-A. Any person who submits an application for renewal more than 90 days after the license renewal date 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 application is received, together with the late fee and renewal fee, within 2 years from the date of that expiration. [2007, c. 402, Pt. Q, §11 (AMD).]

SECTION HISTORY
1967, c. 544, §82 (NEW). 1973, c. 220, §2 (AMD). 1975, c. 767, §§45,46 (AMD). 1979, c. 189, §2 (AMD). 1983, c. 204, §10 (AMD). 1983, c. 413, §155 (RPR). 1983, c. 553, §46 (AMD). 1985, c. 481, §A62 (AMD). 1995, c. 502, §H32 (AMD). 2001, c. 323, §25 (AMD). 2007, c. 402, Pt. Q, §11 (AMD). 2013, c. 262, §2 (AMD).

§3836. ENDORSEMENT; CONDITIONAL LICENSURE

The board may, at any time at its discretion, grant a conditional license without examination to any person who at the time of application is licensed by a similar board of another state whose standards, in the opinion of the board, are equivalent to those required by this chapter. The board, at its discretion, may issue a conditional license, at the appropriate level, to applicants for a permanent license upon payment of the fee as set under section 3833-A. The conditional license is effective for one year and requires that the licensee practice only under supervision. The board may require conditional licensees to pass an examination approved by the board during the term of the conditional license. [2007, c. 402, Pt. Q, §12 (AMD).]

SECTION HISTORY
1967, c. 544, §82 (NEW). 1973, c. 625, §219 (AMD). 1983, c. 413, §156 (AMD). 1983, c. 468, §24 (AMD). 1983, c. 816, §A35 (RPR). 1991, c. 144, §2 (AMD). 2001, c. 323, §26 (AMD). 2007, c. 402, Pt. Q, §12 (AMD).

§3837. SUSPENSION; REFUSAL; OR REVOCATION OF LICENSE

(REPEALED)

SECTION HISTORY

1967, c. 544, §82 (NEW). 1973, c. 303, §3 (AMD). 1975, c. 575, §45 (AMD). 1983, c. 413, §157 (RPR). 1993, c. 600, §A250 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 402, Pt. Q, §13 (RP).

§3837-A. DENIAL OR REFUSAL TO RENEW LICENSE; DISCIPLINARY ACTION

1. **Disciplinary action.** In addition to the grounds enumerated in Title 10, section 8003, subsection 5-A, paragraph A, the board may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A for:

A. Practice of psychology under a false or assumed name or impersonation of another practitioner of a like or different name; [2007, c. 402, Pt. Q, §14 (NEW).]

B. Habitual substance abuse that has resulted or is forseeably likely to result in the licensee performing services in a manner that endangers the health or safety of patients; [2007, c. 402, Pt. Q, §14 (NEW).]

C. An incapacitating mental illness or condition; [2007, c. 402, Pt. Q, §14 (NEW).]

D. Practice of medicine without a license to do so in violation of section 3270; [2007, c. 402, Pt. Q, §14 (NEW).]

E. Practice by a licensed psychological examiner at a level requiring a psychologist's license or any representation by a psychological examiner that that psychological examiner is a psychologist; or [2007, c. 402, Pt. Q, §14 (NEW).]

F. Negligence in the performance of the licensee’s duties. [2007, c. 402, Pt. Q, §14 (NEW).]

[2007, c. 402, Pt. Q, §14 (NEW) .]

2. **Reinstatement.** The board, for reasons it determines sufficient, may reissue a license to a psychological examiner or psychologist whose license has been revoked or has not been renewed if 4 or more of its members vote in favor of reissuance.

[2007, c. 402, Pt. Q, §14 (NEW) .]

SECTION HISTORY
2007, c. 402, Pt. Q, §14 (NEW).

§3838. HEARING ON REFUSAL TO ISSUE OR RENEW

(REPEALED)

SECTION HISTORY
1967, c. 544, §82 (NEW). 1977, c. 694, §619 (AMD). 1983, c. 413, §158 (RPR). 1985, c. 481, §A63 (AMD). 2007, c. 402, Pt. Q, §15 (RP).

§3839. JUDICIAL REVIEW

(REPEALED)

SECTION HISTORY
1967, c. 544, §82 (NEW). 1983, c. 413, §159 (RPR). 2007, c. 402, Pt. Q, §16 (RP).

§3840. COORDINATED LICENSURE-CERTIFICATION PROCESSES

(REPEALED)

SECTION HISTORY
1985, c. 481, §A64 (NEW). 1985, c. 763, §A84 (RPR). 1989, c. 700, §A148 (AMD). 1993, c. 207, §3 (RP).

Chapter 57: PSYCHOLOGISTS

Subchapter 1: GENERAL PROVISIONS

§3851. PRACTICE OF MEDICINE UNAUTHORIZED

(REPEALED)

SECTION HISTORY
1967, c. 321, §2 (RP).

§3852. CRIME AND PENALTY

(REPEALED)

SECTION HISTORY
1967, c. 321, §2 (RP).

Subchapter 2: BOARD OF EXAMINERS

§3901. THE BOARD

(REPEALED)

SECTION HISTORY
1967, c. 321, §2 (RP).

§3902. MEETINGS; ORGANIZATION; DUTIES AND POWERS

(REPEALED)

SECTION HISTORY
1967, c. 321, §2 (RP).

§3903. BOARD MAY WAIVE OR SUSPEND CERTIFICATES

(REPEALED)

SECTION HISTORY
1967, c. 321, §2 (RP).

§3904. DISPOSITION OF FEES

(REPEALED)

SECTION HISTORY
1967, c. 321, §2 (RP).

§3905. BOARD TO MAKE ANNUAL REPORT TO GOVERNOR

(REPEALED)

SECTION HISTORY
1967, c. 321, §2 (RP).

Subchapter 3: REGISTRATION

§3951. PSYCHOLOGISTS TO BE REGISTERED; CERTIFICATION; FEE

(REPEALED)

SECTION HISTORY
1967, c. 321, §2 (RP).

§3952. RENEWAL FEE

(REPEALED)

SECTION HISTORY
1967, c. 321, §2 (RP).

§3953. BOARD MAY WAIVE CERTAIN REQUIREMENTS; RECIPROCITY

(REPEALED)

SECTION HISTORY
1965, c. 425, §20 (AMD). 1967, c. 321, §2 (RP).

Chapter 58: PRACTICE OF PUBLIC ACCOUNTANCY

Subchapter 1: GENERAL PROVISIONS

§3961. DEFINITIONS

(REPEALED)

SECTION HISTORY
1967, c. 321, §1 (NEW). 1967, c. 344, §1 (NEW). 1967, c. 544, §81 (RP). 1987, c. 489, §1 (RP).

§3962. UNLAWFUL PRACTICE

(REPEALED)

SECTION HISTORY
1967, c. 321, §1 (NEW). 1967, c. 544, §81 (RP).

§3963. LIMITATIONS

(REPEALED)

SECTION HISTORY
1967, c. 321, §1 (NEW). 1967, c. 544, §81 (RP).

§3964. PENALTIES

(REPEALED)

SECTION HISTORY
1967, c. 321, §1 (NEW). 1967, c. 544, §81 (RP).

§3965. PRIVILEGED COMMUNICATIONS

(REPEALED)

SECTION HISTORY
1967, c. 321, §1 (NEW). 1967, c. 544, §81 (RP).

§3966. CODE OF ETHICS

(REPEALED)

SECTION HISTORY
1967, c. 321, §1 (NEW). 1967, c. 544, §81 (RP).

Subchapter 2: BOARD OF ACCOUNTANCY

§3971. APPOINTMENT

(REPEALED)

SECTION HISTORY

1967, c. 344, §1 (NEW). 1973, c. 625, §220 (AMD). 1975, c. 575, §§45A,46 (AMD). 1975, c. 771, §§367-369 (AMD). 1983, c. 413, §160 (AMD). 1983, c. 812, §235 (AMD). 1985, c. 106, §2 (AMD). 1987, c. 489, §1 (RP).

§3972. ORGANIZATION; POWERS AND DUTIES; COMPENSATION; EXPENSES

(REPEALED)

SECTION HISTORY
1967, c. 321, §1 (NEW). 1967, c. 344, §1 (NEW). 1967, c. 544, §81 (RP). 1979, c. 517, §§1,2 (AMD). 1983, c. 413, §161 (RPR). 1983, c. 812, §236 (AMD). 1985, c. 106, §3 (AMD). 1987, c. 489, §1 (RP).

§3973. REPORT; LIAISON; LIMITATIONS

(REPEALED)

SECTION HISTORY
1967, c. 321, §1 (NEW). 1967, c. 544, §81 (RP). 1977, c. 604, §32 (NEW). 1983, c. 553, §46 (AMD). 1983, c. 758, §11 (AMD). 1987, c. 489, §1 (RP).

§3974. BUDGET

(REPEALED)

SECTION HISTORY
1977, c. 604, §32 (NEW). 1983, c. 758, §12 (AMD). 1987, c. 489, §1 (RP).

Subchapter 3: REGISTRATION OF CERTIFIED PUBLIC ACCOUNTANTS

§3980. CERTIFICATE

(REPEALED)

SECTION HISTORY
1967, c. 344, §1 (NEW). 1973, c. 625, §221 (AMD). 1987, c. 489, §1 (RP).

§3981. CERTIFIED PUBLIC ACCOUNTANTS

(REPEALED)

SECTION HISTORY
1967, c. 344, §1 (NEW). 1969, c. 590, §62A (AMD). 1971, c. 598, §77 (AMD). 1983, c. 413, §§162,163 (AMD). 1987, c. 489, §1 (RP).

§3982. RECIPROCITY

(REPEALED)

SECTION HISTORY
1967, c. 344, §1 (NEW). 1979, c. 517, §3 (AMD). 1987, c. 489, §1 (RP).

§3983. FEES; 2ND EXAMINATION

(REPEALED)

SECTION HISTORY
1967, c. 344, §1 (NEW). 1979, c. 517, §3 (AMD). 1983, c. 413, §164 (AMD). 1987, c. 489, §1 (RP).

Subchapter 4: REGISTRATION OF PUBLIC ACCOUNTANTS

§3984. CERTIFICATE

(REPEALED)

SECTION HISTORY
1967, c. 344, §1 (NEW). 1977, c. 696, §246 (AMD). 1987, c. 489, §1 (RP).

§3985. REGISTRATION WITHOUT EXAMINATION

(REPEALED)

SECTION HISTORY
1967, c. 321, §1 (NEW). 1967, c. 344, §1 (NEW). 1967, c. 544, §81 (RP). 1969, c. 433, §89 (AMD). 1971, c. 544, §117 (AMD). 1971, c. 622, §118 (RP).

§3986. EXAMINATION

(REPEALED)

SECTION HISTORY
1967, c. 321, §1 (NEW). 1967, c. 344, §1 (NEW). 1967, c. 544, §81 (RP). 1969, c. 433, §90 (AMD). 1971, c. 598, §78 (AMD). 1979, c. 463, §§1,2 (AMD). 1983, c. 413, §§165,166 (AMD). 1987, c. 489, §1 (RP).

§3987. RECIPROCITY

(REPEALED)

SECTION HISTORY
1967, c. 321, §1 (NEW). 1967, c. 344, §1 (NEW). 1967, c. 544, §81 (RP). 1983, c. 413, §167 (AMD). 1987, c. 489, §1 (RP).

§3988. FEES

(REPEALED)

SECTION HISTORY
1967, c. 321, §1 (NEW). 1967, c. 344, §1 (NEW). 1967, c. 544, §81 (RP). 1983, c. 413, §168 (RPR). 1987, c. 489, §1 (RP).

Subchapter 5: OTHER PROVISIONS

§3989. PARTNERSHIPS, CORPORATIONS AND OFFICES

(REPEALED)

SECTION HISTORY

1967, c. 321, §1 (NEW). 1967, c. 344, §1 (NEW). 1967, c. 544, §81 (RP). 1979, c. 517, §4 (AMD). 1987, c. 489, §1 (RP).

§3990. PERMITS TO PRACTICE

(REPEALED)

SECTION HISTORY
1967, c. 344, §1 (NEW). 1975, c. 696, §3 (AMD). 1979, c. 517, §5 (RPR). 1987, c. 489, §1 (RP).

§3991. REVOCATION OR SUSPENSION

(REPEALED)

SECTION HISTORY
1967, c. 344, §1 (NEW). 1977, c. 694, §620 (AMD). 1983, c. 413, §169 (AMD). 1987, c. 489, §1 (RP).

§3992. DISCIPLINARY ACTION

(REPEALED)

SECTION HISTORY
1967, c. 344, §1 (NEW). 1977, c. 694, §621 (RPR). 1983, c. 413, §170 (AMD). 1987, c. 489, §1 (RP).

§3993. REINSTATEMENT

(REPEALED)

SECTION HISTORY
1967, c. 344, §1 (NEW). 1977, c. 694, §622 (RP).

§3994. UNLAWFUL ACTS

(REPEALED)

SECTION HISTORY
1967, c. 344, §1 (NEW). 1973, c. 625, §222 (AMD). 1977, c. 696, §247 (AMD). 1979, c. 517, §§6-9 (AMD). 1987, c. 489, §1 (RP).

§3995. EXCEPTIONS

(REPEALED)

SECTION HISTORY
1967, c. 344, §1 (NEW). 1979, c. 517, §10 (AMD). 1987, c. 489, §1 (RP).

§3996. INJUNCTION

(REPEALED)

SECTION HISTORY
1967, c. 344, §1 (NEW). 1983, c. 413, §171 (RPR). 1987, c. 489, §1 (RP).

§3997. MISDEMEANORS

(REPEALED)

SECTION HISTORY
1967, c. 344, §1 (NEW). 1979, c. 517, §11 (AMD). 1987, c. 489, §1 (RP).

§3998. SINGLE ACT

(REPEALED)

SECTION HISTORY
1967, c. 344, §1 (NEW). 1987, c. 489, §1 (RP).

§3999. OWNERSHIP OF WORKING PAPERS

(REPEALED)

SECTION HISTORY
1967, c. 344, §1 (NEW). 1987, c. 489, §1 (RP).

Chapter 59: REAL ESTATE BROKERS AND SALESMEN

Subchapter 1: GENERAL PROVISIONS
HEADING: PL 1987, C. 395, PT. A, §174 (RP)

§4001. DEFINITIONS AND EXCEPTIONS
(REPEALED)

SECTION HISTORY
1975, c. 248, (AMD). 1981, c. 501, §68 (AMD). 1985, c. 605, §§1,2 (AMD). 1987, c. 395, §A174 (RP).

§4002. NONRESIDENT BROKERS AND SALESMEN
(REPEALED)

SECTION HISTORY
1975, c. 547, §6 (AMD). 1975, c. 767, §47 (AMD). 1981, c. 76, §1 (AMD). 1987, c. 395, §A174 (RP).

§4003. SHARING COMMISSION WITH UNLICENSED PERSON
(REPEALED)

SECTION HISTORY
1969, c. 312, §1 (AMD). 1971, c. 468, §2 (AMD). 1987, c. 395, §A174 (RP).

§4004. EXPIRATION OF LISTING CONTRACTS; RENEWALS
(REPEALED)

SECTION HISTORY
1969, c. 312, §1A (AMD). 1979, c. 401, (AMD). 1987, c. 395, §A174 (RP).

§4004-A. TRUST ACCOUNTS
(REPEALED)

SECTION HISTORY
1965, c. 223, §2 (NEW). 1969, c. 312, §2 (AMD). 1971, c. 468, §3 (AMD). 1973, c. 159, (AMD). 1975, c. 547, §7 (AMD). 1975, c. 767, §48 (AMD). 1987, c. 395, §A174 (RP).

§4005. PENALTIES
(REPEALED)

SECTION HISTORY
1967, c. 359, §1 (AMD). 1971, c. 468, §§4,5 (AMD). 1973, c. 729, §1 (AMD). 1975, c. 547, §8 (AMD). 1975, c. 767, §49 (AMD). 1983, c. 171, §5 (AMD). 1987, c. 395, §A174 (RP).

Subchapter 2: COMMISSION HEADING: PL 1987, C. 395, PT. A, §174 (RP)

§4051. DECLARATION OF POLICY

(REPEALED)

SECTION HISTORY
1975, c. 547, §9 (RPR). 1975, c. 767, §50 (AMD). 1987, c. 395, §A174 (RP).

§4051-A. REAL ESTATE COMMISSION; ORGANIZATION

(REPEALED)

SECTION HISTORY
1975, c. 547, §10 (NEW). 1975, c. 767, §51 (RPR). 1977, c. 674, §27 (AMD). 1981, c. 359, §8 (AMD). 1983, c. 171, §6 (RPR). 1983, c. 511, (RPR). 1983, c. 812, §237 (AMD). 1987, c. 395, §A174 (RP).

§4051-B. RULES AND REGULATIONS

(REPEALED)

SECTION HISTORY
1977, c. 172, (NEW). 1977, c. 694, §623 (AMD). 1987, c. 395, §A174 (RP).

§4051-C. DIRECTOR

(REPEALED)

SECTION HISTORY
1983, c. 171, §7 (NEW). 1983, c. 553, §46 (AMD). 1985, c. 785, §B139 (AMD). 1987, c. 395, §A174 (RP).

§4052. COMPENSATION

(REPEALED)

SECTION HISTORY
1967, c. 359, §2 (AMD). 1973, c. 59, (AMD). 1975, c. 547, §11 (AMD). 1975, c. 767, §52 (RPR). 1983, c. 812, §238 (AMD). 1987, c. 395, §A174 (RP).

§4053. EMPLOYEES

(REPEALED)

SECTION HISTORY
1973, c. 585, §9 (RPR). 1975, c. 547, §12 (RP).

§4053-A. EMPLOYEES

(REPEALED)

SECTION HISTORY
1981, c. 359, §9 (NEW). 1985, c. 785, §B140 (AMD). 1987, c. 395, §A174 (RP).

§4054. SEAL; EVIDENCE; INSPECTION OF RECORDS

(REPEALED)

SECTION HISTORY
1975, c. 547, §13 (AMD). 1975, c. 767, §53 (AMD). 1987, c. 395, §A174 (RP).

§4055. DISPOSAL OF FEES; EXPENSES

(REPEALED)

SECTION HISTORY
1973, c. 585, §10 (AMD). 1975, c. 547, §14 (AMD). 1975, c. 767, §54 (RPR). 1987, c. 395, §A174 (RP).

§4056. INVESTIGATIONS; HEARINGS; SUSPENSION OR REVOCATION OF LICENSE

(REPEALED)

SECTION HISTORY
1973, c. 303, §3 (AMD). 1975, c. 160, (AMD). 1975, c. 547, §§15-18 (AMD). 1975, c. 767, §§55-58 (AMD). 1977, c. 365, (RPR). 1977, c. 694, §624 (AMD). 1981, c. 359, §10 (AMD). 1983, c. 171, §§8,9 (AMD). 1985, c. 748, §40 (AMD). 1987, c. 395, §A174 (RP).

§4057. LIST OF LICENSEES

(REPEALED)

SECTION HISTORY
1975, c. 547, §19 (AMD). 1975, c. 767, §59 (AMD). 1981, c. 501, §69 (RPR). 1987, c. 395, §A174 (RP).

§4058. DENIAL OF LICENSE; VIOLATIONS

(REPEALED)

SECTION HISTORY
1973, c. 303, §3 (AMD). 1975, c. 547, §20 (AMD). 1975, c. 767, §60 (AMD). 1983, c. 171, §10 (RP).

Subchapter 3: LICENSING HEADING: PL 1987, C. 395, PT. A, §174 (RP)

§4101. RULES AND REGULATIONS

(REPEALED)

SECTION HISTORY
1975, c. 547, §21 (AMD). 1975, c. 767, §61 (AMD). 1977, c. 694, §625 (AMD). 1987, c. 395, §A174 (RP).

§4101-A. SCHOOLS

(REPEALED)

SECTION HISTORY

1973, c. 448, §2 (NEW). 1975, c. 547, §22 (RPR). 1975, c. 767, §62 (AMD). 1979, c. 221, §§1,2 (AMD). 1981, c. 707, §1 (AMD). 1985, c. 779, §78 (AMD). 1987, c. 395, §A174 (RP).

§4102. LICENSE REQUIRED

(REPEALED)

SECTION HISTORY
1975, c. 547, §23 (AMD). 1975, c. 767, §63 (AMD). 1987, c. 395, §A174 (RP).

§4102-A. TEMPORARY LICENSE IN CASE OF DEATH

(REPEALED)

SECTION HISTORY
1969, c. 312, §3 (NEW). 1969, c. 590, §63 (AMD). 1975, c. 547, §24 (AMD). 1975, c. 767, §64 (AMD). 1975, c. 770, §188 (AMD). 1977, c. 78, §185 (RPR). 1979, c. 693, §1 (RPR). 1987, c. 395, §A174 (RP).

§4103. APPLICATION FOR REAL ESTATE BROKER'S LICENSE OR SALESMAN'S LICENSE

(REPEALED)

SECTION HISTORY
1965, c. 223, §1 (AMD). 1969, c. 312, §4 (AMD). 1969, c. 433, §91 (AMD). 1971, c. 468, §§6-8 (AMD). 1971, c. 598, §79 (AMD). 1975, c. 547, §§25-27 (AMD). 1975, c. 767, §§65-69 (AMD). 1979, c. 221, §3 (AMD). 1981, c. 76, §2 (AMD). 1983, c. 171, §11 (RPR). 1987, c. 395, §A174 (RP).

§4104. ADDITIONAL APPLICATION REQUIREMENTS FOR BROKER'S LICENSE

(REPEALED)

SECTION HISTORY
1975, c. 547, §28 (AMD). 1975, c. 767, §70 (AMD). 1983, c. 171, §12 (RPR). 1987, c. 395, §A174 (RP).

§4105. ADDITIONAL APPLICATION REQUIREMENTS FOR SALESMAN'S LICENSE

(REPEALED)

SECTION HISTORY
1967, c. 359, §§3,4 (AMD). 1983, c. 171, §13 (RPR). 1987, c. 395, §A174 (RP).

§4106. ADDITIONAL APPLICATION REQUIREMENTS FOR ASSOCIATIONS, PARTNERSHIPS AND CORPORATIONS

(REPEALED)

SECTION HISTORY
1971, c. 468, §§9,10 (AMD). 1975, c. 547, §29 (AMD). 1975, c. 767, §71 (AMD). 1983, c. 171, §14 (RPR). 1987, c. 395, §A174 (RP).

§4107. FEES - BROKERS, SALESMEN AND SCHOOLS

(REPEALED)

SECTION HISTORY
1965, c. 223, §3 (RPR). 1967, c. 359, §5 (AMD). 1971, c. 468, §11 (AMD). 1973, c. 729, §2 (RPR). 1979, c. 693, §2 (RPR). 1981, c. 707, §2 (RPR). 1983, c. 171, §15 (AMD). 1987, c. 395, §A174 (RP).

§4107-A. ASSOCIATIONS, PARTNERSHIPS AND CORPORATIONS

(REPEALED)

SECTION HISTORY
1967, c. 359, §6 (NEW). 1973, c. 729, §3 (AMD). 1979, c. 693, §3 (RPR). 1983, c. 171, §16 (RP).

§4108. DENIAL OF LICENSE OR RENEWAL

(REPEALED)

SECTION HISTORY
1983, c. 171, §17 (RPR). 1987, c. 395, §A174 (RP).

§4109. HEARING ON DENIAL OF LICENSE OR RENEWAL

(REPEALED)

SECTION HISTORY
1983, c. 171, §18 (RPR). 1987, c. 395, §A174 (RP).

§4110. EXAMINATIONS

(REPEALED)

SECTION HISTORY
1965, c. 223, §§3A,4 (AMD). 1967, c. 359, §7 (AMD). 1973, c. 729, §4 (AMD). 1975, c. 294, (AMD). 1975, c. 547, §§30-32 (AMD). 1975, c. 767, §72 (RPR). 1975, c. 770, §189 (AMD). 1977, c. 78, §186 (RPR). 1979, c. 693, §4 (RPR). 1981, c. 76, §3 (AMD). 1983, c. 171, §19 (AMD). 1987, c. 395, §A174 (RP).

§4111. DENIAL OF LICENSE

(REPEALED)

SECTION HISTORY
1975, c. 547, §33 (AMD). 1975, c. 767, §73 (AMD). 1983, c. 171, §20 (RP).

§4112. CONTENTS; DISPLAY

(REPEALED)

SECTION HISTORY
1973, c. 729, §5 (AMD). 1975, c. 547, §34 (AMD). 1975, c. 767, §74 (AMD). 1983, c. 171, §21 (AMD). 1987, c. 395, §A174 (RP).

§4113. POCKET CARDS

(REPEALED)

SECTION HISTORY
1975, c. 547, §35 (AMD). 1975, c. 767, §75 (AMD). 1977, c. 682, §10 (RPR). 1983, c. 171, §22 (AMD). 1987, c. 395, §A174 (RP).

§4114. ACTS AUTHORIZED

(REPEALED)

SECTION HISTORY
1971, c. 468, §12 (RPR). 1987, c. 395, §A174 (RP).

§4115. EXPIRATION; RENEWALS; REVOCATION

(REPEALED)

SECTION HISTORY
1971, c. 468, §13 (AMD). 1973, c. 729, §6 (RPR). 1975, c. 547, §36 (AMD). 1975, c. 767, §76 (RPR). 1979, c. 196, §1 (AMD). 1987, c. 395, §A174 (RP).

§4115-A. LIMITATION

(REPEALED)

SECTION HISTORY
1973, c. 729, §7 (NEW). 1975, c. 547, §37 (AMD). 1975, c. 767, §77 (AMD). 1987, c. 395, §A174 (RP).

§4115-B. CONTINUING EDUCATION COMMITTEE, MEMBERS, DUTIES

(REPEALED)

SECTION HISTORY
1979, c. 196, §2 (NEW). 1981, c. 707, §3 (AMD). 1983, c. 171, §23 (AMD). 1983, c. 812, §239 (AMD). 1987, c. 395, §A174 (RP).

§4115-C. EXCEPTION TO EDUCATION REQUIREMENTS

(REPEALED)

SECTION HISTORY
1979, c. 196, §2 (NEW). 1987, c. 395, §A174 (RP).

§4116. CIVIL ACTIONS

(REPEALED)

SECTION HISTORY
1969, c. 367, §4 (AMD). 1987, c. 395, §A174 (RP).

§4117. PLACE OF BUSINESS

(REPEALED)

SECTION HISTORY
1965, c. 223, §5 (AMD). 1971, c. 468, §§14,15 (AMD). 1973, c. 50, §§1,2 (AMD). 1975, c. 547, §38 (AMD). 1975, c. 767, §78 (AMD). 1979, c. 693, §§5-7 (AMD). 1987, c. 395, §A174 (RP).

§4118. TERMINATION OF EMPLOYMENT

(REPEALED)

SECTION HISTORY
1975, c. 547, §39 (AMD). 1975, c. 767, §79 (AMD). 1979, c. 693, §8 (AMD). 1987, c. 395, §A174 (RP).

§4118-A. NONACTIVE BROKERS

(REPEALED)

SECTION HISTORY
1965, c. 223, §6 (NEW). 1965, c. 513, §§70A,70B (AMD). 1969, c. 312, §5 (AMD). 1975, c. 547, §40 (AMD). 1975, c. 767, §80 (AMD). 1979, c. 196, §3 (AMD). 1979, c. 693, §9 (AMD). 1987, c. 395, §A174 (RP).

§4119. LOST LICENSES

(REPEALED)

SECTION HISTORY
1979, c. 693, §10 (AMD). 1987, c. 395, §A174 (RP).

Subchapter 4: HOME SERVICE CONTRACTS
HEADING: PL 1987, C. 395, PT. A, §174 (RP)

§4120. DEFINITIONS AND EXCEPTIONS

(REPEALED)

SECTION HISTORY
1981, c. 75, (NEW). 1987, c. 395, §A174 (RP).

§4121. RULES

(REPEALED)

SECTION HISTORY
1981, c. 75, (NEW). 1987, c. 395, §A174 (RP).

§4122. REVIEW OF DECISIONS

(REPEALED)

SECTION HISTORY
1981, c. 75, (NEW). 1987, c. 395, §A174 (RP).

§4123. LICENSE REQUIRED

(REPEALED)

SECTION HISTORY
1981, c. 75, (NEW). 1981, c. 698, §160 (AMD). 1987, c. 395, §A174 (RP).

§4124. APPLICATION FOR LICENSE

(REPEALED)

SECTION HISTORY
1981, c. 75, (NEW). 1987, c. 395, §A174 (RP).

§4125. REQUIRED DEPOSIT OR BOND

(REPEALED)

SECTION HISTORY
1981, c. 75, (NEW). 1981, c. 698, §161 (AMD). 1987, c. 395, §A174 (RP).

§4126. RESERVES

(REPEALED)

SECTION HISTORY
1981, c. 75, (NEW). 1987, c. 395, §A174 (RP).

§4127. LICENSE EXPIRATION; RENEWAL

(REPEALED)

SECTION HISTORY
1981, c. 75, (NEW). 1981, c. 698, §162 (AMD). 1987, c. 395, §A174 (RP).

§4128. GROUNDS FOR SUSPENSION OR REVOCATION OF LICENSE OR DENIAL OF RENEWAL

(REPEALED)

SECTION HISTORY
1981, c. 75, (NEW). 1987, c. 395, §A174 (RP).

§4129. AUTOMATIC TERMINATION OF SALES AGENT REGISTRATION

(REPEALED)

SECTION HISTORY
1981, c. 75, (NEW). 1987, c. 395, §A174 (RP).

§4130. ORDER, NOTICE OF SUSPENSION OR REVOCATION OF LICENSE

(REPEALED)

SECTION HISTORY
1981, c. 75, (NEW). 1987, c. 395, §A174 (RP).

§4131. DURATION OF SUSPENSION; OBLIGATION DURING SUSPENSION PERIOD; REINSTATEMENT

(REPEALED)

SECTION HISTORY
1981, c. 75, (NEW). 1987, c. 395, §A174 (RP).

§4132. FILING OF FORMS

(REPEALED)

SECTION HISTORY
1981, c. 75, (NEW). 1987, c. 395, §A174 (RP).

§4133. FILING OF FEES

(REPEALED)

SECTION HISTORY
1981, c. 75, (NEW). 1987, c. 395, §A174 (RP).

§4134. ANNUAL STATEMENT; EXAMINATION

(REPEALED)

SECTION HISTORY
1981, c. 75, (NEW). 1987, c. 395, §A174 (RP).

§4135. SERVICE OF PROCESS; APPOINTMENT OF DIRECTOR AS PROCESS AGENT

(REPEALED)

SECTION HISTORY
1981, c. 75, (NEW). 1987, c. 395, §A174 (RP).

§4136. HOME SERVICE COMPANY SALES AGENT REGISTRATION REQUIRED

(REPEALED)

SECTION HISTORY
1981, c. 75, (NEW). 1987, c. 395, §A174 (RP).

§4137. PENALTY FOR VIOLATION

(REPEALED)

SECTION HISTORY
1981, c. 75, (NEW). 1987, c. 395, §A174 (RP).

Chapter 60: RAILROAD PERSONNEL

Subchapter 1: GENERAL PROVISIONS HEADING: PL 1993, C. 428, §4 (RP)

§4140. DECLARATION OF PURPOSE

(REPEALED)

SECTION HISTORY
1987, c. 790, §2 (NEW). 1993, c. 428, §4 (RP).

§4141. DEFINITIONS

(REPEALED)

SECTION HISTORY
1987, c. 790, §2 (NEW). 1993, c. 428, §4 (RP).

Subchapter 2: BOARD OF LICENSURE OF RAILROAD PERSONNEL HEADING: PL 1993, C. 428, §4 (RP)

§4145. BOARD OF LICENSURE; APPOINTMENT; VACANCIES; REMOVAL; COMPENSATION

(REPEALED)

SECTION HISTORY
1987, c. 790, §2 (NEW). 1993, c. 428, §4 (RP).

§4146. ADMINISTRATIVE PROVISIONS

(REPEALED)

SECTION HISTORY
1987, c. 790, §2 (NEW). 1993, c. 428, §4 (RP).

§4147. BOARD OF LICENSURE; POWERS AND DUTIES

(REPEALED)

SECTION HISTORY
1987, c. 790, §2 (NEW). 1993, c. 428, §4 (RP).

Subchapter 3: LICENSE HEADING: PL 1993, C. 428, §4 (RP)

§4148. LICENSE REQUIRED; ISSUANCE

(REPEALED)

SECTION HISTORY
1987, c. 790, §2 (NEW). 1993, c. 428, §4 (RP).

§4149. DISCIPLINARY ACTIONS

(REPEALED)

SECTION HISTORY

1987, c. 790, §2 (NEW). 1993, c. 428, §4 (RP).

§4150. FEES

(REPEALED)

SECTION HISTORY
1987, c. 790, §2 (NEW). 1989, c. 450, §27 (AMD). 1993, c. 428, §4 (RP).

Chapter 61: SARDINE PACKERS

Subchapter 1: LICENSES HEADING: PL 1991, C. 446, PT. C, §2 (RPR)

§4151. DEFINITIONS

(REPEALED)

SECTION HISTORY
1973, c. 658, §1 (AMD). 1977, c. 696, §248 (AMD). 1979, c. 62, §1 (AMD). 1985, c. 737, §A89 (AMD). 1991, c. 446, §A1 (RP).

§4152. MAINE SARDINE COUNCIL

(REPEALED)

SECTION HISTORY
1979, c. 26, §1 (AMD). 1979, c. 731, §15 (RPR). 1983, c. 812, §240 (AMD). 1989, c. 503, §B143 (AMD). 1991, c. 446, §A2 (RP).

§4153. LICENSE REQUIRED

A person, firm, corporation, association or society may not pack sardines, kippers, steaks or other canned herring products within the State for sale without having first filed with the Commissioner of Agriculture, Conservation and Forestry an application for license, accompanied with a fee of $50, upon receipt of which application the commissioner shall issue to the person, firm, corporation, association or society making such application a license to pack sardines, kippers, steaks or other canned herring products. Each such license covers one group of buildings constituting a packing plant in one location. The license runs from January 1st and expires in a manner consistent with the provisions of the Maine Administrative Procedure Act as to license expiration or on December 31st of each year, whichever is later, unless sooner revoked and must be renewed annually. Before issuing such license or renewing it, the commissioner may by adequate inspection determine that the laws and regulations relating to the packing of sardines, kippers, steaks or other canned herring products and the operation of packing plants for sardines, kippers, steaks or other canned herring products are being observed. [1995, c. 307, §2 (AMD); 2011, c. 657, Pt. W, §6 (REV).]

SECTION HISTORY
1965, c. 123, (AMD). 1977, c. 694, §626 (AMD). 1993, c. 14, §1 (AMD). 1995, c. 307, §2 (AMD). 2011, c. 657, Pt. W, §6 (REV).

§4154. REPEAL, REVOCATION OR REFUSAL; APPEALS

The Commissioner of Agriculture, Conservation and Forestry, in a manner consistent with the Maine Administrative Procedure Act, has the power to refuse to issue and to refuse to renew, and the District Court, in a manner consistent with the Maine Administrative Procedure Act, has the power to revoke or to suspend any license issued under this chapter whenever any of the provisions of the chapter or rules or regulations promulgated or established under the chapter have been violated. A person, firm, corporation, association or society whose license has been so revoked or suspended shall discontinue the packing of sardines, kippers, steaks or other canned herring products until this chapter has been complied with and a new license issued or the suspension removed. The District Court may revoke or suspend the license temporarily until there is a compliance with this chapter or permanently for the unexpired period of the license. [1995, c. 307, §3 (AMD); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF); 2011, c. 657, Pt. W, §6 (REV).]

SECTION HISTORY

1977, c. 694, §627 (AMD). 1995, c. 307, §3 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2011, c. 657, Pt. W, §6 (REV).

§4155. INSPECTION; CONFORMITY WITH FEDERAL ACTS; BRANDING; EMBARGO AND CONDEMNATION

(REPEALED)

SECTION HISTORY
1971, c. 247, (AMD). 1975, c. 103, §§1,2 (AMD). 1977, c. 694, §§628,629 (AMD). 1979, c. 62, §2 (AMD). 1991, c. 446, §A3 (RP).

§4156. FEES; DISPOSITION

(REPEALED)

SECTION HISTORY
1973, c. 658, §2 (AMD). 1977, c. 694, §630 (AMD). 1979, c. 62, §3 (RPR). 1979, c. 731, §16 (AMD). 1983, c. 85, §1 (AMD). 1991, c. 446, §A4 (RP).

§4157. STANDARDS

(REPEALED)

SECTION HISTORY
1965, c. 332, §§1,2 (AMD). 1977, c. 694, §§631-633 (AMD). 1979, c. 62, §4 (RPR). 1989, c. 639, §1 (AMD). 1991, c. 446, §A5 (RP).

§4157-A. SARDINES FOR EXPORT; EXEMPT FROM QUANTITY AND QUALITY PROVISIONS OF MAINE SARDINE LAW

(REPEALED)

SECTION HISTORY
1965, c. 332, §3 (NEW). 1967, c. 241, (AMD). 1977, c. 694, §634 (AMD). 1989, c. 482, §1 (AMD). 1989, c. 639, §2 (AMD). 1991, c. 446, §A6 (RP).

§4158. CANS TO BE SEALED AND LINED

(REPEALED)

SECTION HISTORY
1991, c. 446, §A7 (RP).

§4159. SALE OR PACKING OF HERRING

(REALLOCATED TO TITLE 12, SECTION 6547)

SECTION HISTORY
1967, c. 274, (AMD). 1971, c. 290, (AMD). 1975, c. 44, §§1,2 (AMD). 1983, c. 387, §2 (AMD). 1985, c. 268, §6 (AMD). 1989, c. 482, §2 (RPR). 1991, c. 446, §A8 (RAL).

§4160. PENALTIES

A person, firm, corporation, association or society who packs sardines, kippers, steaks or other canned herring products in the State for sale without the license provided for in section 4153, or who violates any of the provisions of this chapter, or neglects or refuses to comply with any of the provisions required in this chapter or in any way violates any of its provisions may be punished by a fine not exceeding $500 or by imprisonment for not more than 6 months, or by both for each and every offense. [1995, c. 307, §4 (AMD).]

SECTION HISTORY
1995, c. 307, §4 (AMD).

§4161. SHORT TITLE

This chapter shall be known as the "Maine Sardine Law." [1965, c. 332, §4 (NEW).]

SECTION HISTORY
1965, c. 332, §4 (NEW).

Subchapter 2: MAINE SARDINE COUNCIL HEADING: PL 1991, C. 446, PT. C, §3 (NEW); PL 1999, C. 678, §1 (RP)

§4165. PURPOSE

(REPEALED)

SECTION HISTORY
1991, c. 446, §C3 (NEW). 1995, c. 307, §5 (AMD). 1999, c. 678, §9 (AFF). 1999, c. 678, §1 (RP).

§4166. DEFINITIONS

(REPEALED

SECTION HISTORY
1991, c. 446, §C3 (NEW). 1993, c. 14, §§2,3 (AMD). 1993, c. 585, §4 (AMD). 1995, c. 307, §§6-9 (AMD). 1997, c. 706, §§1,2 (AMD). 1999, c. 678, §9 (AFF). 1999, c. 678, §1 (RP).

§4167. MAINE SARDINE COUNCIL

(REPEALED)

SECTION HISTORY
1991, c. 446, §C3 (NEW). 1993, c. 585, §§5,6 (AMD). 1995, c. 307, §10 (AMD). 1995, c. 660, §1 (AMD). 1997, c. 706, §3 (AMD). 1997, c. 706, §16 (AFF). 1999, c. 678, §9 (AFF). 1999, c. 678, §1 (RP).

§4167-A. COUNCIL AUTHORITY; CODE PLANS, EMBARGO AND PETITIONS

(REPEALED)

SECTION HISTORY
1993, c. 14, §4 (NEW). 1995, c. 307, §11 (AMD). 1997, c. 706, §4 (RP).

§4168. STANDARDS

(REPEALED)

SECTION HISTORY
1991, c. 446, §C3 (NEW). 1991, c. 784, §14 (AMD). 1993, c. 14, §5 (AMD). 1993, c. 585, §7 (AMD). 1995, c. 307, §§12-14 (AMD). 1997, c. 706, §5 (RP).

§4169. SARDINES FOR EXPORT; EXEMPT FROM QUANTITY PROVISIONS OF MAINE SARDINE LAW

(REPEALED)

SECTION HISTORY
1991, c. 446, §C3 (NEW). 1993, c. 14, §§6-8 (AMD). 1995, c. 307, §15 (AMD). 1997, c. 706, §6 (RP).

§4170. CANS TO BE SEALED; LINED

(REPEALED)

SECTION HISTORY
1991, c. 446, §C3 (NEW). 1993, c. 14, §9 (AMD). 1995, c. 307, §16 (AMD). 1997, c. 706, §7 (RP).

§4170-A. PENALTIES

(REPEALED)

SECTION HISTORY
1993, c. 14, §10 (NEW). 1997, c. 706, §8 (RP).

Chapter 62: SEWAGE TREATMENT OPERATORS

§4171. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings. [1977, c. 696, §249 (RPR).]

1. **Board.** "Board" shall mean the Board of Environmental Protection.

[1971, c. 618, §12 (RPR) .]

2. **Certificate.** "Certificate" shall mean a certificate of competency issued by the board stating that the applicant has met the requirements for the specified operator classification.

[1971, c. 618, §12 (AMD) .]

3. **Operator.** "Operator" shall mean the person who has direct responsibility for the operation of any wastewater treatment plant serving a public purpose. The person who shall be certified shall be the person who has management responsibility over the plant. Shift operators or other employees under the supervision of the manager need not be certified.

[1969, c. 237, (NEW) .]

4. **Wastewater treatment plant.** "Wastewater treatment plant" shall mean the facility or group of units provided for the treatment of wastewater, either or both sewage and industrial wastes, and for the reduction and handling of sewage removed from such wastes.

[1969, c. 237, (NEW) .]

SECTION HISTORY
1969, c. 237, (NEW). 1969, c. 282, (NEW). 1969, c. 431, §9 (AMD). 1969, c. 590, §64 (RP). 1971, c. 618, §12 (AMD). 1977, c. 696, §249 (AMD).

§4172. CLASSIFICATION

The commissioner shall classify all wastewater treatment plants actually used or intended for use by the public with due regard to the size, type, character of wastewater to be treated and other physical conditions affecting those treatment plants and shall specify the qualifications the operator in responsible charge must have to supervise successfully the operation of those facilities so as to protect the public health or prevent nuisance conditions or unlawful pollution. [1989, c. 890, Pt. A, §4 (AMD); 1989, c. 890, Pt. A, §40 (AFF).]

SECTION HISTORY
1969, c. 237, (NEW). 1969, c. 282, (NEW). 1969, c. 590, §64 (RP). 1971, c. 618, §12 (AMD). 1989, c. 890, §§A4,40 (AMD).

§4173. CERTIFICATION

The commissioner shall certify persons as to their competency to supervise successfully the operation of wastewater treatment plants. A certification is not required of an operator who is a registered professional engineer. [1989, c. 890, Pt. A, §4 (AMD); 1989, c. 890, Pt. A, §40 (AFF).]

SECTION HISTORY

1969, c. 237, (NEW). 1969, c. 282, (NEW). 1969, c. 590, §64 (RP). 1971, c. 618, §12 (AMD). 1989, c. 890, §§A4,40 (AMD).

§4173-A. CONTINUING EDUCATION

1. **Training.** The Department of Environmental Protection shall administer a continuing educational program for people engaged in water pollution control activities. This program shall provide advanced training in the technical and legal aspects of water pollution control, and coordinate and distribute information about all water pollution control training programs available in the State.

[1983, c. 832, §1 (NEW) .]

2. **Funds.** The department may accept funds, public and private, for the purposes of this section.

[1983, c. 832, §1 (NEW) .]

3. **Self supporting.** This program shall be self-supporting from fees, grants or other sources of revenue.

[1987, c. 510, (AMD) .]

SECTION HISTORY
1983, c. 832, §1 (NEW). 1985, c. 204, (AMD). 1987, c. 510, (AMD).

§4174. EXAMINATION; CRITERIA; STANDARDS

The commissioner shall hold at least one examination each year for the purpose of examining candidates for certification at a time and place designated by the commissioner. [1989, c. 890, Pt. A, §4 (AMD); 1989, c. 890, Pt. A, §40 (AFF).]

The board shall establish the criteria and conditions for the classification of wastewater treatment plants or systems, using as a basis the standards established by the New England Water Pollution Control Association. [1971, c. 618, §12 (AMD).]

The board shall establish by rule the qualifications, conditions and licensing standards and procedures for the certification of individuals to act as operators. [1989, c. 890, Pt. A, §4 (AMD); 1989, c. 890, Pt. A, §40 (AFF).]

The Department of Environmental Protection may allow an operator to review with department staff an operator certification test that the operator has completed in order to identify subject areas for which questions were answered incorrectly and further study is advisable. [2011, c. 206, §2 (NEW).]

SECTION HISTORY
1969, c. 237, (NEW). 1971, c. 618, §12 (AMD). 1989, c. 890, §§A4,40 (AMD). 2011, c. 206, §2 (AMD).

§4175. CERTIFICATES

The commissioner shall issue certificates attesting to the competency of individuals to act as operators. The certificate shall indicate the classification level of the systems or plants for the operation of which the individual is qualified to act as an operator. [1989, c. 890, Pt. A, §5 (AMD); 1989, c. 890, Pt. A, §40 (AFF).]

Certificates shall continue in effect unless revoked by the District Court. [1977, c. 694, §635 (AMD); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF).]

The District Court may revoke the certificate of an operator, in accordance with Title 4, chapter 5, when it is found that the operator has practiced fraud or deception; that reasonable care, judgment or the application of the operator's knowledge or ability was not used in the performance of the operator's duties; or that the operator is incompetent or unable properly to perform the operator's duties. [1999, c. 547, Pt. B, §69 (AMD); 1999, c. 547, Pt. B, §80 (AFF).]

Operators whose certificates are invalidated under this section may be issued new certificates of a like classification provided appropriate proof of competency is presented to the commissioner. [1989, c. 890, Pt. A, §5 (AMD); 1989, c. 890, Pt. A, §40 (AFF).]

This chapter shall not be construed to affect or prevent the practice of any other legally recognized profession. [1969, c. 237, (NEW).]

SECTION HISTORY
1969, c. 237, (NEW). 1969, c. 282, (NEW). 1969, c. 590, §64 (RP). 1971, c. 618, §12 (AMD). 1977, c. 694, §635 (AMD). 1989, c. 890, §§A5,40 (AMD). 1999, c. 547, §§B69,78 (AMD). 1999, c. 547, §B80 (AFF).

§4176. WITHOUT EXAMINATION, OTHER STATES

The commissioner, upon application therefor, may issue a certificate, without examination, in a comparable classification, to any person who holds a certificate in any state, territory or possession of the United States or any country, providing the requirements for certification of operators under which the person's certificate was issued do not conflict with this chapter and are of a standard not lower than that specified by rules adopted under this chapter. [1989, c. 890, Pt. A, §6 (AMD); 1989, c. 890, Pt. A, §40 (AFF).]

SECTION HISTORY
1969, c. 237, (NEW). 1969, c. 282, (NEW). 1969, c. 590, §64 (RP). 1971, c. 618, §12 (AMD). 1989, c. 890, §§A6,40 (AMD).

§4177. WITHOUT EXAMINATION, OTHER OWNERS

Certificates may be issued without examination to the person or persons certified by the governing body or owner to have been in direct responsible charge of a wastewater treatment plant on October 1, 1969. A certificate so issued will be valid only for that particular classification level or treatment plant or system. [1973, c. 625, §223 (AMD).]

SECTION HISTORY
1969, c. 237, (NEW). 1969, c. 282, (NEW). 1969, c. 590, §64 (RP). 1973, c. 625, §223 (AMD).

§4178. APPLICATION

This chapter shall apply only to conventional wastewater treatment plants which are separate and apart from other facilities. [1969, c. 237, (NEW).]

SECTION HISTORY
1969, c. 237, (NEW). 1969, c. 282, (NEW). 1969, c. 590, §64 (RP).

§4179. RULES

The Board of Environmental Protection shall adopt rules which include, but are not limited to, provisions establishing the basis for classification of treatment plants in accordance with section 4172 and provisions establishing requirements for certification and procedures for examination of candidates. [1989, c. 890, Pt. A, §7 (AMD); 1989, c. 890, Pt. A, §40 (AFF).]

SECTION HISTORY
1969, c. 237, (NEW). 1969, c. 282, (NEW). 1969, c. 590, §64 (RP). 1971, c. 618, §12 (AMD). 1977, c. 300, §8 (RPR). 1989, c. 890, §§A7,40 (AMD).

§4180. FEES

(REPEALED)

SECTION HISTORY
1969, c. 237, (NEW). 1969, c. 282, (NEW). 1969, c. 590, §64 (RP). 1973, c. 712, §4 (RP).

§4181. PENALTY

It is unlawful for any person, firm or corporation, both municipal and private, to operate a wastewater treatment plant unless the competency of the operator is certified to by the commissioner under this chapter. It is unlawful for any person to perform the duties of an operator, as defined, without being duly certified under this chapter. The commissioner may further grant a waiver for a period not exceeding one year for the operation of a wastewater treatment plant serving not more than 500 services in the event that the certification requirements cannot be met. [1989, c. 890, Pt. A, §8 (AMD); 1989, c. 890, Pt. A, §40 (AFF).]

SECTION HISTORY
1969, c. 237, (NEW). 1969, c. 282, (NEW). 1969, c. 590, §64 (RP). 1971, c. 76, (AMD). 1971, c. 618, §12 (AMD). 1973, c. 625, §224 (AMD). 1989, c. 890, §§A8,40 (AMD).

§4182. VIOLATION OF LAW OR RULES AND REGULATIONS

Any person, firm or corporation, both municipal and private, violating any provision of this chapter or the rules and regulations adopted thereunder is guilty of a misdemeanor. Each day of operation in violation of this chapter or any rules and regulations adopted thereunder shall constitute a separate offense. [1969, c. 237, (NEW).]

SECTION HISTORY
1969, c. 237, (NEW). 1969, c. 282, (NEW). 1969, c. 590, §64 (RP).

Chapter 62-A: SOCIAL WORKERS

Subchapter 1: GENERAL PROVISIONS

§4183. DEFINITIONS

(REPEALED)

SECTION HISTORY
1969, c. 282, (NEW). 1969, c. 590, §65 (NEW). 1969, c. 590, §64 (RP). 1977, c. 673, §2 (RP).

§4184. VIOLATIONS

(REPEALED)

SECTION HISTORY
1969, c. 282, (NEW). 1969, c. 590, §65 (NEW). 1969, c. 590, §64 (RP). 1977, c. 673, §2 (RP).

§4185. EXEMPTIONS

(REPEALED)

SECTION HISTORY
1969, c. 282, (NEW). 1969, c. 590, §65 (NEW). 1969, c. 590, §64 (RP). 1977, c. 673, §2 (RP).

§4185-A. SERVICES TO MINORS FOR DRUG ABUSE

(REPEALED)

SECTION HISTORY
1971, c. 237, §4 (NEW). 1973, c. 145, §5 (RPR). 1977, c. 673, §2 (RP).

Subchapter 2: STATE BOARD OF SOCIAL WORKER REGISTRATION

§4186. STATE BOARD OF SOCIAL WORKER REGISTRATION CREATED

(REPEALED)

SECTION HISTORY
1969, c. 282, (NEW). 1969, c. 590, §65 (NEW). 1969, c. 590, §64 (RP). 1975, c. 575, §47 (AMD). 1977, c. 673, §2 (RP).

§4187. QUALIFICATIONS

(REPEALED)

SECTION HISTORY
1969, c. 262, (NEW). 1969, c. 590, §65 (NEW). 1969, c. 590, §64 (RP). 1975, c. 575, §48 (AMD). 1977, c. 673, §2 (RP).

§4188. COMPENSATION AND EXPENSES

(REPEALED)

SECTION HISTORY
1969, c. 282, (NEW). 1969, c. 590, §65 (NEW). 1969, c. 590, §64 (RP). 1977, c. 673, §2 (RP).

§4189. ORGANIZATION AND MEETINGS

(REPEALED)

SECTION HISTORY
1969, c. 590, §65 (NEW). 1977, c. 673, §20 (RP).

§4190. POWERS

(REPEALED)

SECTION HISTORY
1969, c. 590, §65 (NEW). 1977, c. 673, §2 (RP).

§4190-A. REPORTS; LIMITATIONS

(REPEALED)

SECTION HISTORY
1977, c. 604, §33 (NEW). 1977, c. 673, §2 (RP). 1979, c. 127, §182 (RP).

§4190-B. BUDGET

(REPEALED)

SECTION HISTORY
1977, c. 644, §33 (NEW). 1977, c. 673, §2 (RP). 1979, c. 127, §182 (RP).

Subchapter 3: REGISTRATION

§4191. REGISTRATION REQUIRED

(REPEALED)

SECTION HISTORY
1969, c. 590, §65 (NEW). 1977, c. 673, §2 (RP).

§4192. QUALIFICATIONS

(REPEALED)

SECTION HISTORY
1969, c. 590, §65 (NEW). 1971, c. 598, §80 (AMD). 1977, c. 673, §2 (RP).

§4193. REGISTRATION WITHOUT EXAMINATION

(REPEALED)

SECTION HISTORY

1969, c. 590, §65 (NEW). 1971, c. 544, §118 (AMD). 1971, c. 598, §81 (AMD). 1971, c. 622, §120 (AMD). 1973, c. 625, §225 (AMD). 1977, c. 673, §2 (RP).

§4194. APPLICATION; FEES

(REPEALED)

SECTION HISTORY
1969, c. 590, §65 (NEW). 1977, c. 673, §2 (RP).

§4195. EXAMINATIONS

(REPEALED)

SECTION HISTORY
1969, c. 590, §65 (NEW). 1977, c. 673, §2 (RP).

§4196. CERTIFICATES

(REPEALED)

SECTION HISTORY
1969, c. 590, §65 (NEW). 1977, c. 673, §2 (RP).

§4197. REVOCATION AND REISSUANCE

(REPEALED)

SECTION HISTORY
1969, c. 590, §65 (NEW). 1971, c. 622, §121 (AMD). 1977, c. 673, §2 (RP).

§4198. EXPIRATION AND RENEWALS

(REPEALED)

SECTION HISTORY
1969, c. 590, §65 (NEW). 1977, c. 673, §2 (RP).

§4199. RECEIPTS AND DISBURSEMENTS

(REPEALED)

SECTION HISTORY
1969, c. 590, §65 (NEW). 1971, c. 622, §121A (AMD). 1977, c. 673, §2 (RP).

Chapter 63: TATTOO ARTISTS

Subchapter 1: GENERAL PROVISIONS

§4201. DEFINITIONS

Tattoo means to insert pigment under the skin of a human being by pricking with a needle or otherwise, so as to produce an indelible mark or figure visible through the skin.

§4202. EXEMPTIONS

This chapter is not intended to apply to any act of a practitioner of the healing arts licensed in the State and performed in the course of his practice.

§4203. MINORS

No person shall place a tattoo mark or figure upon a person under the age of 18 years. [1975, c. 701, §16 (RPR).]

SECTION HISTORY
1969, c. 433, §92 (AMD). 1971, c. 598, §82 (AMD). 1975, c. 701, §16 (RPR).

§4204. PENALTIES

1. **Penalty.** A person who fails to be licensed as required by this chapter, violates the sterilization, sanitation or safety standards adopted by the Department of Health and Human Services under section 4251 or performs tattooing on a minor commits a civil violation for which a fine of not less than $500 nor more than $1,000 may be adjudged for each violation.

[2013, c. 264, §14 (NEW) .]

2. **Enforcement.** A person who fails to pay a penalty imposed pursuant to this chapter:

A. May be referred to the Attorney General for appropriate enforcement action; and [2013, c. 264, §14 (NEW).]

B. In addition to all fines and penalties imposed pursuant to this chapter, is liable for any interest, costs and fees incurred by the Department of Health and Human Services, including attorney's fees. [2013, c. 264, §14 (NEW).]

[2013, c. 264, §14 (NEW) .]

SECTION HISTORY
2013, c. 264, §14 (RPR).

§4223.

(REPEALED)

SECTION HISTORY
1975, c. 767, §75 (AMD).

Subchapter 2: DEPARTMENT OF HUMAN SERVICES

§4251. RULES AND REGULATIONS

The Department of Health and Human Services is authorized and empowered to make necessary rules and regulations governing the application of tattoos upon the bodies of human beings. [1975, c. 293, §4 (AMD); 2003, c. 689, Pt. B, §6 (REV).]

SECTION HISTORY
1975, c. 293, §4 (AMD). 2003, c. 689, §B6 (REV).

§4252. ISSUANCE OF LICENSES

The Department of Health and Human Services may license persons to practice the art of tattooing. Such licenses are issued for a term of one year and may be renewed annually. The fee for an initial license or a renewal license may not exceed $250. All fees collected by the department pursuant to this section must be deposited in a special revenue account dedicated to a health inspection program. [2013, c. 264, §15 (AMD).]

SECTION HISTORY
1975, c. 293, §4 (AMD). 2003, c. 689, §B6 (REV). 2009, c. 589, §11 (AMD). 2013, c. 264, §15 (AMD).

Subchapter 3: LICENSES

§4301. LICENSE REQUIRED

No person shall place a tattoo upon the body of another human being without first obtaining a license from the Department of Health and Human Services. [1975, c. 293, §4 (AMD); 2003, c. 689, Pt. B, §6 (REV).]

SECTION HISTORY
1975, c. 293, §4 (AMD). 2003, c. 689, §B6 (REV).

Chapter 63-A: MICROPIGMENTATION

§4311. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1997, c. 383, §1 (NEW).]

1. **Department.** "Department" means the Department of Health and Human Services.

[1997, c. 383, §1 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

2. **Micropigmentation.** "Micropigmentation" means placing nontoxic dyes or pigments into or under the subcutaneous portion of the skin so as to form indelible marks for cosmetic or medical purposes. "Micropigmentation" does not include tattooing.

[1997, c. 383, §1 (NEW) .]

3. **Micropigmentation facility.** "Micropigmentation facility" means any space where micropigmentation is practiced.

[1997, c. 383, §1 (NEW) .]

4. **Micropigmentation practitioner.** "Micropigmentation practitioner" means a person who practices micropigmentation.

[1997, c. 383, §1 (NEW) .]

SECTION HISTORY
1997, c. 383, §1 (NEW). 2003, c. 689, §B6 (REV).

§4312. LICENSE REQUIRED

1. **Requirement.** A person may not practice micropigmentation, display a sign or otherwise advertise or purport to be a micropigmentation practitioner unless that person holds a valid license issued by the department.

[1997, c. 383, §1 (NEW) .]

2. **Term of license.** A license issued under this chapter expires on September 30th and is renewable biennially.

[1997, c. 383, §1 (NEW) .]

3. **Exemption.** This chapter does not apply to a physician or a person acting under the control or supervision of a physician.

[1997, c. 383, §1 (NEW) .]

SECTION HISTORY
1997, c. 383, §1 (NEW).

§4313. LICENSING RULES

The department shall adopt licensing rules governing the practice of micropigmentation under this chapter. Rules adopted under this chapter are routine technical rules for purposes of Title 5, chapter 375, subchapter II-A. The rules must include the following. [1997, c. 383, §1 (NEW).]

1. **Standards of practice.** The department shall adopt rules that provide standards for the practice of micropigmentation that include at least the following.

A. Instruments used for micropigmentation must be sterilized in a manner specified by the department. [1997, c. 383, §1 (NEW).]

B. Micropigmentation facilities must be equipped with appropriate sterilization equipment, hot and cold running water and a covered waste receptacle. [1997, c. 383, §1 (NEW).]

C. Case history records must be kept for each client. [1997, c. 383, §1 (NEW).]

D. A micropigmentation practitioner must demonstrate safety, sanitation and sterilization procedures and knowledge of infection control. [1997, c. 383, §1 (NEW).]

[1997, c. 383, §1 (NEW) .]

2. **Education and training.** The department shall adopt rules specifying the education and training standards for the practice of micropigmentation. The rules may require continuing education.

The licensing rules must be adopted by the department by November 1, 1997.

[1997, c. 383, §1 (NEW) .]

SECTION HISTORY
1997, c. 383, §1 (NEW).

§4314. FEE

The fee for a license under this chapter may not exceed $150. The fee required by this section includes the cost of a biennial inspection of the micropigmentation facility by the department. However, the department may inspect the facility at any time. All fees collected by the department pursuant to this section must be deposited into a special revenue account dedicated to a health inspection program. [2009, c. 589, §12 (AMD).]

SECTION HISTORY
1997, c. 383, §1 (NEW). 2009, c. 589, §12 (AMD).

§4315. ELIGIBILITY

To be eligible for a license under this chapter a person must: [1997, c. 383, §1 (NEW).]

1. **Age.** Be at least 18 years of age;

[1997, c. 383, §1 (NEW) .]

2. **High school diploma.** Have a high school diploma or equivalent education;

[1997, c. 383, §1 (NEW) .]

3. **Additional training.** Submit evidence of completion of education or training required by rules of the department under the direct supervision of a licensed micropigmentation practitioner; and

[1997, c. 383, §1 (NEW) .]

4. **Compliance.** Demonstrate ability to comply with the rules of the department.

[1997, c. 383, §1 (NEW) .]

SECTION HISTORY
1997, c. 383, §1 (NEW).

§4316. REVOCATION; SUSPENSION; OR REFUSAL TO ISSUE

The department may revoke, suspend or refuse to issue a license or renewal or place a licensee on probation if: [1997, c. 383, §1 (NEW).]

1. **Conviction.** The person has been convicted of a crime related to the practice of micropigmentation;

[1997, c. 383, §1 (NEW) .]

2. **Deception or misrepresentation.** Has engaged in any deception or misrepresentation to the department or the public in applying for a license under this chapter or in the advertising or practice of micropigmentation;

[1997, c. 383, §1 (NEW) .]

3. **Incompetence.** Has demonstrated negligence, incompetence or danger to the public in the practice of micropigmentation; or

[1997, c. 383, §1 (NEW) .]

4. **Violation of rules.** Has violated any of the rules adopted by the department under this chapter.

[1997, c. 383, §1 (NEW) .]

SECTION HISTORY
1997, c. 383, §1 (NEW).

§4317. COMPLIANCE

Beginning January 1, 1998, a person seeking to engage in the business of micropigmentation shall comply with the provisions of this chapter. [1997, c. 383, §1 (NEW).]

SECTION HISTORY
1997, c. 383, §1 (NEW).

§4318. PENALTIES

1. **Penalty.** A person who fails to be licensed as provided by section 4312 or violates the sterilization, sanitation or safety standards adopted by the department under section 4313 commits a civil violation for which a fine of not less than $500 nor more than $1,000 may be adjudged for each violation.

[2013, c. 264, §16 (NEW) .]

2. **Enforcement.** A person who fails to pay a penalty imposed pursuant to this chapter:

A. May be referred to the Attorney General for appropriate enforcement action; and [2013, c. 264, §16 (NEW).]

B. In addition to all fines and penalties imposed pursuant to this chapter, is liable for any interest, costs and fees incurred by the department, including attorney's fees. [2013, c. 264, §16 (NEW).]

[2013, c. 264, §16 (NEW) .]

SECTION HISTORY
2013, c. 264, §16 (NEW).

Chapter 64: BODY PIERCING

§4321. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1997, c. 206, §1 (NEW).]

1. **Body piercer.** "Body piercer" means a person who performs body piercing on another.

[1997, c. 206, §1 (NEW) .]

2. **Body piercing.** "Body piercing" means the creation of an opening in the body of a human being for the purpose of inserting jewelry or other decoration. This includes, but is not limited to, piercing of an ear, lip, tongue, nose or eyebrow. "Body piercing" does not, for the purpose of this chapter, include piercing an earlobe with a disposable, single-use stud or solid needle that is applied using a mechanical device to force the needle or stud through the earlobe. Piercing in an area other than the earlobe, located at the lower end of the ear, is "body piercing" as defined in this subsection and subject to the licensing requirements of this chapter.

[2007, c. 184, §1 (AMD) .]

3. **Body piercing establishment.** "Body piercing establishment" means the premises where a body piercer performs body piercing.

[1997, c. 206, §1 (NEW) .]

4. **Department.** "Department" means the Department of Health and Human Services.

[1997, c. 206, §1 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

5. **Minor.** "Minor" means an individual under 18 years of age who is not emancipated as defined by Title 15, section 3003, subsection 6.

[1997, c. 206, §1 (NEW) .]

SECTION HISTORY
1997, c. 206, §1 (NEW). 2003, c. 689, §B6 (REV). 2007, c. 184, §1 (AMD).

§4322. SAFETY STANDARDS

The department shall establish sterilization, sanitation and safety standards for persons engaged in the business of body piercing. The standards must be directed at establishment and maintenance of sterile conditions and safe disposal of instruments. The standards may be modified as appropriate to protect consumers from transmission of contagious diseases through cross-contamination of instruments and supplies. The standards must be adopted by the department by November 1, 1997. [1997, c. 206, §1 (NEW).]

SECTION HISTORY
1997, c. 206, §1 (NEW).

§4323. BODY PIERCING OF MINORS

A body piercer may not perform body piercing on a minor unless the individual obtains the prior written consent of the minor's parent or legal guardian. The prohibition contained in this section does not apply if: [1997, c. 206, §1 (NEW).]

1. **Proper identification.** The body piercer has been furnished with proper identification showing that the individual is 18 years of age or older; and

[1997, c. 206, §1 (NEW) .]

2. **Age.** The body piercer reasonably believes such a minor to be 18 years of age or older.

[1997, c. 206, §1 (NEW) .]

SECTION HISTORY
1997, c. 206, §1 (NEW).

§4324. LICENSE REQUIRED

A person may not engage in the art of body piercing without first obtaining a license from the department. [1997, c. 206, §1 (NEW).]

SECTION HISTORY
1997, c. 206, §1 (NEW).

§4325. ISSUANCE OF LICENSES

The department may license persons to practice the art of body piercing. Licenses are issued annually by the department upon the payment of a fee not to exceed $250. The license for a person engaged in both the arts of tattooing, as defined by chapter 63, and body piercing may not exceed $300. The fee required by this section includes the cost of an annual inspection of the body piercing establishment by the department. Licenses expire one year from date of issue. All fees collected by the department pursuant to this section must be deposited into a special revenue account dedicated to a health inspection program. [2009, c. 589, §13 (AMD).]

SECTION HISTORY
1997, c. 206, §1 (NEW). 2009, c. 589, §13 (AMD).

§4326. RULES

The department shall adopt rules necessary for regulating the art of body piercing. Rules adopted pursuant to this chapter are routine technical rules as defined by Title 5, chapter 375, subchapter II-A. [1997, c. 206, §1 (NEW).]

SECTION HISTORY
1997, c. 206, §1 (NEW).

§4327. PENALTIES

1. **Penalty.** A person who fails to be licensed as provided by section 4324, violates the sterilization, sanitation or safety standards adopted by the department under section 4326 or performs body piercing on a minor without parental consent under section 4323 commits a civil violation for which a fine of not less than $500 nor more than $1,000 may be adjudged for each violation.

[2013, c. 264, §17 (NEW) .]

2. **Enforcement.** A person who fails to pay a penalty imposed pursuant to this chapter:

A. May be referred to the Attorney General for appropriate enforcement action; and [2013, c. 264, §17 (NEW).]

B. In addition to all fines and penalties imposed pursuant to this chapter, is liable for any interest, costs and fees incurred by the department, including attorney's fees. [2013, c. 264, §17 (NEW).]

[2013, c. 264, §17 (NEW) .]

SECTION HISTORY
1997, c. 206, §1 (NEW). 2013, c. 264, §17 (RPR).

§4328. COMPLIANCE

Beginning January 1, 1998, a person seeking to engage in the business of body piercing shall comply with the provisions of this chapter. [1997, c. 206, §1 (NEW).]

SECTION HISTORY
1997, c. 206, §1 (NEW).

§4329. RESTRICTION

This chapter does not restrict the activities of a physician or surgeon licensed under chapter 48. [1997, c. 206, §1 (NEW).]

SECTION HISTORY
1997, c. 206, §1 (NEW).

Chapter 65: TAXIDERMISTS; DEALERS IN SKINS AND FURS

§4351. LICENSES FOR TAXIDERMISTS

(REPEALED)

SECTION HISTORY
1975, c. 590, §26 (AMD). 1979, c. 420, §6 (RP).

§4352. DEER SKINS AND HEADS

(REPEALED)

SECTION HISTORY
1967, c. 147, (RPR). 1969, c. 425, §55 (AMD). 1971, c. 403, §46 (AMD).
1975, c. 590, §27 (AMD). 1979, c. 241, §1 (RPR). 1979, c. 420, §6 (RP).

§4353. LICENSES FOR DEALERS IN FURS

(REPEALED)

SECTION HISTORY
1975, c. 590, §28 (AMD). 1979, c. 241, §2 (RP). 1979, c. 420, §6 (RP).

Chapter 67: TRANSPORTATION OR CUTTING OF CHRISTMAS TREES

Subchapter 1: GENERAL PROVISIONS (HEADING: PL 1979, C. 545, §22 (RP))

§4401. DEFINITIONS

(REPEALED)

SECTION HISTORY
1965, c. 226, §78 (AMD). 1979, c. 545, §22 (RP).

§4402. OWNER'S PERMISSION REQUIRED

(REPEALED)

SECTION HISTORY
1965, c. 226, §78 (AMD). 1979, c. 545, §22 (RP).

§4403. FORGERY

(REPEALED)

SECTION HISTORY
1979, c. 545, §22 (RP).

§4404. SEIZURE OR ATTACHMENT

(REPEALED)

SECTION HISTORY
1965, c. 226, §79 (AMD). 1979, c. 545, §22 (RP).

§4405. FEDERAL QUARANTINE REGULATIONS

(REPEALED)

SECTION HISTORY
1965, c. 226, §79 (AMD). 1979, c. 545, §22 (RP).

§4406. TREES FROM OUT OF STATE

(REPEALED)

SECTION HISTORY
1965, c. 226, §79 (AMD). 1979, c. 545, §22 (RP).

§4407. YEARLY CHRISTMAS TREE HARVEST OR SALE REPORT

(REPEALED)

SECTION HISTORY
1965, c. 226, §80 (RP).

§4408. ENFORCEMENT AGENCIES

(REPEALED)

SECTION HISTORY
1965, c. 226, §81 (AMD). 1979, c. 541, §A207 (AMD). 1979, c. 545, §22 (RP). 1979, c. 663, §210 (RP).

Subchapter 2: REGISTRATION (HEADING: PL 1979, C. 545, §22 (RP))

§4451. REGISTRATION REQUIRED

(REPEALED)

SECTION HISTORY
1965, c. 226, §82 (AMD). 1977, c. 567, §1 (AMD). 1977, c. 599, (RPR). 1979, c. 545, §22 (RP).

§4452. REVOCATION; APPEALS; PENALTIES

(REPEALED)

SECTION HISTORY
1965, c. 226, §82 (AMD). 1977, c. 694, §§636,637 (AMD). 1979, c. 545, §22 (RP).

Chapter 69: VENDORS

Subchapter 1: GENERAL PROVISIONS

§4501. DEFINITIONS

(REPEALED)

SECTION HISTORY
1977, c. 440, §1 (RP).

§4502. EXEMPTIONS

(REPEALED)

SECTION HISTORY
1973, c. 250, §1 (AMD). 1977, c. 440, §1 (RP).

§4503. STATE AND LOCAL LICENSE REQUIRED

(REPEALED)

SECTION HISTORY
1977, c. 440, §1 (RP).

§4504. FALSE STATEMENTS

(REPEALED)

SECTION HISTORY
1977, c. 440, §1 (RP).

Subchapter 2: STATE LICENSE

§4551. DEPOSIT; LICENSE NONTRANSFERABLE; ASSISTANTS

(REPEALED)

SECTION HISTORY
1973, c. 250, §2 (AMD). 1977, c. 440, §1 (RP).

§4552. PROCEEDINGS

(REPEALED)

SECTION HISTORY
1973, c. 250, §3 (AMD). 1977, c. 440, §1 (RP).

§4553. VENDOR TO NOTIFY SECRETARY OF STATE OF DISTRESS SALES

(REPEALED)

SECTION HISTORY
1977, c. 440, §1 (RP).

§4554. EXPIRATION

(REPEALED)

SECTION HISTORY
1977, c. 440, §1 (RP).

§4555. RETURN OF DEPOSIT ON EXPIRATION

(REPEALED)

SECTION HISTORY
1973, c. 250, §4 (AMD). 1977, c. 440, §1 (RP).

§4556. DEPOSITS SUBJECT TO CLAIMS; ORDER OF PREFERENCE

(REPEALED)

SECTION HISTORY
1973, c. 250, §5 (AMD). 1977, c. 440, §1 (RP).

Subchapter 3: LOCAL LICENSE

§4601. PROCEEDINGS

(REPEALED)

SECTION HISTORY
1977, c. 440, §1 (RP).

§4602. FEE RELATED TO AMOUNT OF STOCK; INCREASE; SCOPE OF LICENSE

(REPEALED)

SECTION HISTORY
1977, c. 440, §1 (RP).

§4603. FAILURE TO OBTAIN LICENSE; PENALTY

(REPEALED)

SECTION HISTORY
1977, c. 440, §1 (RP).

§4604. LIEN FOR LICENSE FEE

(REPEALED)

SECTION HISTORY
1977, c. 440, §1 (RP).

Subchapter 4: VIOLATIONS AND PENALTIES

§4651. LACK OF LICENSE

(REPEALED)

SECTION HISTORY

1973, c. 250, §6 (AMD). 1977, c. 440, §1 (RP).

§4652. ADVERTISING BEFORE LICENSE ISSUED

(REPEALED)

SECTION HISTORY
1977, c. 440, §1 (RP).

Subchapter 5: CONSUMER SOLICITATION SALES

§4661. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following words shall have the following meanings. [1977, c. 696, §250 (NEW).]

1. **Consumer.** "Consumer" means any person who purchases or contracts for the purchase of merchandise for any purpose, except resale in the ordinary course of trade or business.

[1969, c. 395, (NEW) .]

2. **Merchandise.** "Merchandise" includes any objects, wares, goods, commodities, intangibles or services.

[1969, c. 395, (NEW) .]

2-A. **Permanent place of business.** "Permanent place of business" means the building or other permanently affixed structure, including a home residence, which is used in whole or in part for the purpose of engaging in sales of consumer merchandise.

[1987, c. 202, §1 (NEW) .]

3. **Person.** "Person" includes any individual, firm, copartnership, association, society, club, corporation, estate, trust and any agent, employee, salesman, partner, officer, director, member, stockholder or trustee thereof.

[1969, c. 395, (NEW) .]

4. **Sale.** "Sale" includes any sale, transfer, exchange or barter, offer for sale or attempt to sell any merchandise for cash or on credit.

[1969, c. 395, (NEW) .]

SECTION HISTORY
1969, c. 395, (NEW). 1977, c. 696, §250 (AMD). 1987, c. 202, §1 (AMD).

§4662. CONTENTS OF CONTRACT

1. **Contract required.** When merchandise is sold or contracted to be sold, whether under a single contract or under multiple contracts, to a consumer as a result of or in connection with a seller's direct contact accomplished by means of and including, but not limited to, a personal visit or a telephone call upon the consumer, other than at the seller's place of business, without the consumer soliciting the initial contact, the contract must:

A. Be in writing; [2003, c. 452, Pt. R, §6 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. Bear the signature of the seller and the consumer; [2003, c. 452, Pt. R, §6 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

C. Contain the date of the transaction; [2003, c. 452, Pt. R, §6 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

D. Contain the terms of the sale or offer; [2003, c. 452, Pt. R, §6 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

E. Contain the name and the mailing address of the seller's permanent place of business; [2003, c. 452, Pt. R, §6 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

F. Contain a statement of the consumer's right to avoid as provided in this subchapter; and [2003, c. 452, Pt. R, §6 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

G. Contain a statement of the limitation contained in section 4664-A. [2003, c. 452, Pt. R, §6 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

The seller shall furnish a completely executed copy of the contract or agreement to the consumer immediately after the consumer signs the agreement or contract.

[2003, c. 452, Pt. R, §6 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

2. **Penalty.** The following penalties apply to violations of this section.

A. A seller who violates this section commits a Class E crime, which is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. [2003, c. 452, Pt. R, §6 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. A seller who intentionally violates this section commits a Class D crime. [2003, c. 452, Pt. R, §6 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. R, §6 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY
1969, c. 395, (NEW). 1977, c. 331, (RPR). 1981, c. 187, §3 (AMD). 1987, c. 202, §2 (AMD). 2003, c. 452, §X2 (AFF). 2003, c. 452, §R6 (RPR).

§4662-A. FROZEN FOOD CONTRACTS

(REPEALED)

SECTION HISTORY
1991, c. 239, §2 (NEW). 1991, c. 750, §3 (RP).

§4663. CONSUMER'S RIGHT OF AVOIDANCE

Where merchandise is sold or contracted to be sold, whether under a single contract or under multiple contracts, to a consumer as a result of or in connection with a salesman's direct contact accomplished by means of and including, but not limited to, a personal visit or a telephone call, upon the consumer other than at the seller's place of business, without the consumer soliciting the initial contact or sale, the consumer may void the contract or sale by giving notice of his intention not to be bound by the contract or sale and returning or making available for return any merchandise delivered pursuant to the terms of this subchapter. [1977, c. 331, (RPR).]

SECTION HISTORY
1969, c. 395, (NEW). 1977, c. 331, (RPR).

§4664. NOTICE

The consumer may avoid a contract or sale by giving written notice of avoidance to the seller by ordinary mail, postage prepaid, within 3 full business days following the day on which the contract or sale was made. The notice shall be sufficient if addressed to the seller at the address given on the contract or agreement. Notice of avoidance shall be effective upon deposit in the United States mail. The notice of avoidance given under this section need not take a particular form and is sufficient if it expresses the intention of the consumer not to be bound by the sale. [1969, c. 395, (NEW).]

In addition to any other right to avoid a contract or sale, the first-time buyer of a home food service plan has the right prior to delivery of the food or nonfood items to avoid the contract or sale until midnight of the 10th day after the date on which the buyer signs a contract subject to this subchapter. If the contract requires the seller to deliver a home food service plan, the seller shall allow the first-time buyer of a home food service plan to avoid the contract or sale subject to this subchapter, without charge, at the time of delivery of the food or nonfood items. [1991, c. 750, §4 (NEW).]

SECTION HISTORY
1969, c. 395, (NEW). 1991, c. 750, §4 (AMD).

§4664-A. TIME OF SELLER'S PERFORMANCE

1. **Performance after right to cancel.** If the contract requires the seller to affix merchandise permanently to real estate or its appurtenances, then the seller may not begin performance as long as the consumer has the right to cancel.

[2003, c. 452, Pt. R, §7 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

2. **Penalty.** The following penalties apply to violations of this section.

A. A person who violates this section commits a Class E crime, which is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. [2003, c. 452, Pt. R, §7 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. A person who intentionally violates this section commits a Class D crime. [2003, c. 452, Pt. R, §7 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. R, §7 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY
1981, c. 187, §4 (NEW). 2003, c. 452, §X2 (AFF). 2003, c. 452, §R7 (RPR).

§4665. CONSUMER'S OBLIGATION

Within 20 days of notification to the seller of the avoidance of a contract or sale as provided under this subchapter, the consumer upon demand shall tender to the seller any goods delivered to the buyer pursuant to the sale or contract but need not tender at any place other than his residence. If the seller fails to take possession of such goods within 20 days after cancellation, the goods shall become the property of the consumer without obligation to pay for them. [1971, c. 150, §1 (RPR).]

SECTION HISTORY
1969, c. 395, (NEW). 1971, c. 150, §1 (RPR).

§4666. SELLER'S OBLIGATION

1. **Return upon avoidance.** If the seller is given written notice of avoidance by the consumer pursuant to this subchapter and any merchandise that has been delivered is returned or made available for return to the seller, the seller must return to the consumer within 15 days of the effective date of the notice of avoidance the full amount of any payment or down payment made or consideration given under the contract or sale for the merchandise.

[2003, c. 452, Pt. R, §8 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

2. **Penalty.** The following penalties apply to violations of this section.

A. A person who violates this section commits a Class E crime, which is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. [2003, c. 452, Pt. R, §8 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. A person who intentionally violates this section commits a Class D crime. [2003, c. 452, Pt. R, §8 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. R, §8 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY
1969, c. 395, (NEW). 2003, c. 452, §X2 (AFF). 2003, c. 452, §R8 (RPR).

§4667. CRIMINAL PENALTIES

(REPEALED)

SECTION HISTORY
1969, c. 395, (NEW). 1987, c. 202, §3 (AMD). 1995, c. 681, §2 (RPR).
2003, c. 452, §X2 (AFF). 2003, c. 452, §R9 (RP).

§4668. LIMITATION

1. **Exclusions.** This subchapter does not apply to the following:

A. A sale where the gross sales price, including any interest or carrying charges, is less than $25; [2001, c. 276, §1 (NEW).]

B. A transaction regulated under Title 9-A, sections 3-501 to 3-507; [2001, c. 276, §1 (NEW).]

C. A sale by a dealer or agent or salesman of a dealer registered pursuant to chapter 135 of stocks, bonds, debentures or securities representing stocks, bonds or debentures registered pursuant to chapter 135 or expressly exempt from registration pursuant to chapter 135; [2005, c. 65, Pt. C, §17 (AMD).]

D. A sale of insurance regulated under Title 24-A, sections 2515-A and 2717; or [2001, c. 276, §1 (NEW).]

E. A sale of credit services by a supervised lender, as defined in Title 9-A, section 1-301, subsection 39, or an agent or affiliate of a supervised lender to the extent the affiliate or agent is selling or offering to sell the credit services of the supervised lender. For purposes of this paragraph, "credit services" includes any extension of credit and any product or service that a supervised lender is authorized by law or regulation to sell in connection with or relating to an extension of credit, such as credit insurance and a debt cancellation policy. For the purposes of this paragraph, "affiliate" has the same meaning as that

term is defined in Title 9-B, section 131, subsection 1-A. Transactions covered by this exemption are limited to those that become effective only after the consumer has affirmed the terms and conditions of the agreement by an acceptance initiated by the consumer. [2001, c. 276, §1 (NEW).]

[2005, c. 65, Pt. C, §17 (AMD) .]

SECTION HISTORY
1969, c. 395, (NEW). 1969, c. 530, (AMD). 1971, c. 544, §§118-A (AMD). 1973, c. 762, §12 (AMD). 1977, c. 696, §251 (AMD). 2001, c. 276, §1 (RPR). 2005, c. 65, §C17 (AMD).

§4669. REFERRAL SALES, REBATE OR DISCOUNT VIOLATIONS

No seller, in any sale subject to this subchapter, shall offer to pay a commission or give a rebate or discount to the buyer in consideration of the buyer's giving to the seller the names of prospective purchasers or otherwise aiding the seller in making a sale to another person, if the earning of the commission, rebate or discount is contingent upon an event that is to happen subsequent to the time the buyer agrees to buy. [1971, c. 150, §2 (NEW).]

SECTION HISTORY
1971, c. 150, §2 (NEW).

§4670. VIOLATION AS UNFAIR TRADE PRACTICE

Any violation of this subchapter shall constitute a violation of Title 5, chapter 10, Unfair Trade Practices Act. [1973, c. 249, (NEW).]

SECTION HISTORY
1973, c. 249, (NEW).

§4671. PROHIBITED PRACTICES

A seller may not: [1991, c. 524, §4 (NEW).]

1. **Misrepresentations.** Misrepresent any material fact relating to the terms or conditions of sale;

[1991, c. 524, §4 (NEW) .]

2. **False impressions.** Create an impression that is false or the seller does not believe to be true; and

[1991, c. 524, §4 (NEW) .]

3. **False promises.** Promise performance that the seller does not intend to perform or knows will not be performed.

[1991, c. 524, §4 (NEW) .]

SECTION HISTORY
1991, c. 524, §4 (NEW).

Chapter 69-A: TRANSIENT SALES

§4681. DEFINITIONS

(REPEALED)

SECTION HISTORY
1977, c. 440, §2 (NEW). 1979, c. 191, (AMD). 1983, c. 285, (AMD). 1991, c. 239, §3 (AMD). 1991, c. 750, §5 (AMD). 1999, c. 386, §§N1,O1-4 (AMD). 2001, c. 324, §1 (RP).

§4682. STATE REGISTRATION

(REPEALED)

SECTION HISTORY
1977, c. 440, §2 (NEW). 1977, c. 696, §384 (AMD). 1985, c. 763, §A85 (AMD). RR 1993, c. 1, §89 (COR). 2001, c. 324, §1 (RP).

§4682-A. REGISTRATIONS

(REPEALED)

SECTION HISTORY
1983, c. 236, §1 (NEW). 1985, c. 763, §A86 (AMD). 1991, c. 714, §11 (AMD). RR 1993, c. 1, §90 (COR). 1995, c. 681, §3 (AMD). 2001, c. 324, §1 (RP).

§4682-B. DISCLOSURE OF REGISTRATION NUMBER AND PERMANENT PLACE OF BUSINESS

(REPEALED)

SECTION HISTORY
1985, c. 269, (NEW). 1985, c. 763, §A87 (AMD). RR 1993, c. 1, §91 (COR). 2001, c. 324, §1 (RP).

§4683. LOCAL REGISTRATION

(REPEALED)

SECTION HISTORY
1977, c. 440, §2 (NEW). 1985, c. 763, §A88 (AMD). 2001, c. 324, §1 (RP).

§4684. APPLICATION

(REPEALED)

SECTION HISTORY
1977, c. 440, §2 (NEW). 1983, c. 553, §46 (AMD). 1985, c. 590, §§1,2 (AMD). 1985, c. 763, §§A89,90 (AMD). RR 1993, c. 1, §§92-94 (COR). 2001, c. 324, §1 (RP).

§4684-A. RENEWAL APPLICATION

(REPEALED)

SECTION HISTORY
1977, c. 440, §2 (NEW). 1979, c. 302, §6 (AMD). 1983, c. 236, §2 (AMD). 1983, c. 553, §46 (AMD). RR 1993, c. 1, §95 (COR). 2001, c. 324, §1 (RP).

§4685. REGISTRATION FEE AND SECURITY DEPOSIT

(REPEALED)

SECTION HISTORY
1977, c. 440, §2 (NEW). 1977, c. 696, §§385,386 (AMD). 1983, c. 236, §3 (RPR). 1983, c. 553, §46 (AMD). 1985, c. 763, §A91 (AMD). 1991, c. 714, §12 (AMD). RR 1993, c. 1, §96 (COR). 1999, c. 685, §14 (AMD). 2001, c. 324, §1 (RP).

§4685-A. WAIVER OF SECURITY DEPOSIT

(REPEALED)

SECTION HISTORY
1977, c. 440, §2 (NEW). 1983, c. 553, §46 (AMD). 2001, c. 324, §1 (RP).

§4685-B. REVOCATION OF RIGHT TO WAIVE SECURITY DEPOSIT

(REPEALED)

SECTION HISTORY
1977, c. 440, §2 (NEW). 1983, c. 553, §46 (AMD). RR 1993, c. 1, §97 (COR). 2001, c. 324, §1 (RP).

§4686. EXPIRATION

(REPEALED)

SECTION HISTORY
1977, c. 440, §2 (NEW). 1985, c. 763, §A92 (AMD). RR 1993, c. 1, §98 (COR). 2001, c. 324, §1 (RP).

§4687. SECURITY DEPOSIT SUBJECT TO CLAIMS; ORDER OF PREFERENCE; RETURN OF SECURITY DEPOSIT

(REPEALED)

SECTION HISTORY
1977, c. 440, §2 (NEW). 1985, c. 763, §A93 (AMD). RR 1993, c. 1, §99 (COR). 2001, c. 324, §1 (RP).

§4688. VIOLATIONS AND PENALTIES

(REPEALED)

SECTION HISTORY
1977, c. 440, §2 (NEW). 1985, c. 763, §A94 (AMD). 1995, c. 681, §4 (RPR). 2001, c. 324, §1 (RP).

§4689. SERVICE OF PROCESS

(REPEALED)

SECTION HISTORY
1977, c. 440, §2 (NEW). 1983, c. 553, §46 (AMD). RR 1993, c. 1, §100 (COR). 2001, c. 324, §1 (RP).

§4690. PROHIBITED PRACTICES

(REPEALED)

SECTION HISTORY
1991, c. 524, §5 (NEW). 2001, c. 324, §1 (RP).

§4690-A. TELEMARKETERS

(REPEALED)

SECTION HISTORY
1999, c. 694, §4 (NEW). 2001, c. 324, §1 (RP).

Chapter 69-B: REGULATIONS OF THE SALE OF BUSINESS OPPORTUNITIES

§4691. DEFINITIONS

As used in this chapter, unless the context indicates otherwise, the following terms shall have the following meanings. [1979, c. 571, (NEW).]

1. **Affiliated person.** "Affiliated person" means a person who:

A. Directly or indirectly controls, is controlled by or is under common control with, a seller; [1979, c. 571, (NEW).]

B. Directly or indirectly owns, controls or holds with power to vote, 10% or more of the outstanding voting securities of a seller; or [1979, c. 571, (NEW).]

C. Has, in common with a seller, one or more partners, officers, directors, trustees, branch managers or other persons occupying similar status or performing similar functions. [1979, c. 571, (NEW).]

[1979, c. 571, (NEW) .]

2. **Business day.** "Business day" means any day other than Saturday, Sunday or the following national holidays: New Year's Day; Washington's Birthday; Memorial Day; Independence Day; Labor Day; Columbus Day; Veteran's Day; Thanksgiving and Christmas.

[1979, c. 571, (NEW) .]

3. **Business opportunity.** "Business opportunity" means:

A. The sale, lease or distribution of any services, products, equipment, supplies, goods or commodities, including plants used for cultivation and animals used for breeding, that are sold, leased or distributed by the seller or an affiliated person to the purchaser for the purpose of enabling the purchaser to start a business, for which the purchaser is required to pay an amount that exceeds $250 either as a single payment or in multiple payments during any consecutive 6-month period and in which the seller represents that:

(1) The seller or an affiliated person will provide locations or assist the purchaser in finding locations for the use or operation of vending machines, racks, display cases or other similar devices or currency-operated amusement machines or devices, on premises neither owned nor leased by the purchaser or seller;

(2) The seller or an affiliated person will purchase any or all products made, produced, fabricated, grown, bred or modified by the purchaser using in whole or in part, the supplies, services or chattels sold to the purchaser;

(3) The seller guarantees that the purchaser will derive income from the business opportunity that exceeds the price paid for the business opportunity;

(4) If the purchaser is unsatisfied with the business opportunity, the seller will refund all or part of the price paid for the business opportunity, or repurchase any of the products, equipment, supplies or chattels supplied by the seller; or

(5) The seller or an affiliated person will provide a sales program or marketing program except that this subsection does not apply to a marketing program provided in conjunction with the licensing of a federally registered trademark or service mark; and [1991, c. 210, §1 (AMD).]

B. "Business opportunity" does not include the sale of an ongoing business when the owner of that business sells and intends to sell only that one business opportunity; nor does it include the not-for-profit sale of sales demonstration equipment, materials or samples, for a total price of $500 or less. [1985, c. 597, §1 (AMD).]

[1991, c. 210, §1 (AMD) .]

4. **Permanent place of business.** "Permanent place of business" means any building or other permanently affixed structure, including a home residence, which is owned or held under a 12-month lease or rental agreement at the time business is commenced and is used in whole or in part for the purpose of engaging in sales or promotion of business opportunities.

[1979, c. 571, (NEW) .]

5. **Purchaser.** "Purchaser" means a person who purchases, leases or communicates with a seller concerning the purchase or lease of a business opportunity.

[1979, c. 571, (NEW) .]

6. **Seller.** "Seller" means a person who sells, leases or distributes or offers to sell, lease or distribute, advertises or undertakes any other act relating to the promotion of business opportunities.

[1979, c. 571, (NEW) .]

SECTION HISTORY
1979, c. 571, (NEW). 1985, c. 597, §1 (AMD). 1991, c. 210, §1 (AMD).

§4692. WHEN DISCLOSURE STATEMENT MUST BE PROVIDED

Seller shall provide all purchasers with a disclosure statement meeting the requirements of this chapter at the earliest of: at least 72 hours before the purchaser signs a business opportunity agreement; at least 72 hours before the purchaser makes payment of any consideration in connection with the sales or proposed sale of the business opportunity; or the first face-to-face meeting between the seller and the purchaser that is held for the purpose of discussing the sale or proposed sale of a business opportunity. [1991, c. 210, §2 (AMD).]

SECTION HISTORY
1979, c. 571, (NEW). 1991, c. 210, §2 (AMD).

§4693. REQUIRED DISCLOSURE

The disclosure statement must include the following information accurately, clearly and concisely stated, in a legible written document. A disclosure statement meeting the criteria of any rules or regulations of the Federal Trade Commission requiring disclosure statements by sellers fulfills the requirements of this section to the extent that the substituted disclosure statement meets or exceeds the requirements of this section: [1991, c. 210, §3 (AMD).]

1. **Information.** The official name, address and principal place of business of the seller and any affiliated person;

[1979, c. 571, (NEW) .]

2. **Notice.** The following notice: As required by Maine law, we have secured a bond in the amount of $30,000 issued by _____ . (Name and address of surety company)

Before signing a contract to purchase a business opportunity, you should check with the surety company to determine the current status of the bond.

or

As required by Maine law, we maintain an escrow account in the amount of $30,000 in the _____ . (Name and address of licensed bank or savings institute)

Before signing a contract to purchase a business opportunity, you should check with the licensed bank or savings institute to determine the current status of the escrow account.

[2013, c. 424, Pt. B, §11 (AMD) .]

3. **Statement.** A statement describing:

A. The total funds that must be paid by the purchaser to the seller or an affiliated person in order to obtain or commence the business opportunity operation, including, but not limited to, deposits, down payments and fees; [1991, c. 210, §4 (AMD).]

B. As to each of these fees or deposits, whether they are refundable or returnable and under what conditions they may be refunded or returned; and [1979, c. 571, (NEW).]

C. The recurring fees required to be paid by the purchaser to the seller, affiliated person or unaffiliated 3rd person; [1979, c. 571, (NEW).]

[1991, c. 210, §4 (AMD) .]

4. **Statement of cost.** A statement describing and listing the cost to the purchaser of any services, supplies, products, inventories, signs, real estate, fixtures or equipment relating to the establishment or operation of the business opportunity which the purchaser is directly or indirectly required by the seller to purchase, lease or rent from any person, including a list of the names and addresses of those persons and whether they are affiliated persons;

[1979, c. 571, (NEW) .]

5. **Description of services provided.** A description of the services that the seller or affiliated person provides to purchasers, including, but not limited to, a description of the services which the seller or affiliated persons provides with regard to securing retail outlets or sites for purchasers;

[1979, c. 571, (NEW) .]

5-A. **Licenses and permits.** A detailed description of any licenses or permits that are necessary in order for the purchaser to engage in or operate the business opportunity.

[1991, c. 210, §5 (NEW) .]

6. **Limitations.** A statement describing whether the purchaser is:

A. Limited in the goods or services which he may offer for sale; [1979, c. 571, (NEW).]

B. Limited in the customers to whom he may sell goods or services; [1979, c. 571, (NEW).]

C. Limited in the geographic area in which he may sell goods or services; or [1979, c. 571, (NEW).]

D. Granted territorial protection by the seller, by which the seller will not establish another, or more than any fixed number of, similar business opportunities in a particular area or territory; [1979, c. 571, (NEW).]

[1979, c. 571, (NEW) .]

7. **Other purchasers.** The names and last known addresses of the greater of:

A. All purchasers of the seller who currently operate or have operated a business opportunity in the State within the previous 5 years; or [1979, c. 571, (NEW).]

B. The 10 purchasers who currently operate or have operated a business opportunity nearest the prospective purchaser's intended location within the previous 5 years; [1979, c. 571, (NEW).]

[1979, c. 571, (NEW) .]

8. **Statement of conditions of termination.** A statement disclosing the conditions under which the business opportunity may be terminated by either the seller or purchaser;

[1979, c. 571, (NEW) .]

9. **Copy of contracts.** A copy of all contracts or agreements relating to the sale of the business opportunity;

[1979, c. 571, (NEW) .]

10. **Sales.** If the seller makes or intends to make any representations, oral or written, to a prospective purchaser concerning:

A. Estimated, projected or potential sales, income and gross or net profit for that prospective purchaser; or [1979, c. 571, (NEW).]

B. The specific level of sales, income and gross or net profits of existing business opportunities:

A statement:

(1) Describing the representations;

(2) Setting forth the total number of purchasers operating business opportunities similar to that being offered by the seller who have received earnings in the amount or range specified within the 3 years preceding the date of the disclosure statement;

(3) Setting forth the total number of purchasers operating business opportunities similar to that being offered by the seller within the 3 years preceding the date of the disclosure statement; and

(4) Containing the following notice in conspicuous type:

We are required by law to have in our possession materials which constitute a reasonable basis for representations concerning estimated, projected and actual sales, income and gross or net profits. We will provide you with this information upon your request. [1979, c. 571, (NEW).]

[1979, c. 571, (NEW) .]

11. **Trademarks of seller.** If the seller uses the trademark, service mark, trade name, logotype, advertising or other commercial symbol of any business which does not either control the ownership interest in the seller or accept responsibility for all representations made by the seller in regard to the business opportunity, a statement that the owner of the commercial symbol is not involved in the sale of the business opportunity; and

[1979, c. 571, (NEW) .]

12. **Notice.** The following notice:

Pursuant to Maine statute you have the right to avoid the contract for purchase of this business opportunity within 3 business days following the signing of the contract. You should obtain and study a copy of the law regulating the sale of business opportunities before you attempt to avoid the contract. This law is found in the Maine Revised Statutes, Title 32, section 4698.

[1979, c. 571, (NEW) .]

13. **Additional information.** Any additional information that the Securities Administrator requires by rule.

[1991, c. 210, §5 (NEW) .]

SECTION HISTORY
1979, c. 571, (NEW). 1991, c. 210, §§3-5 (AMD). RR 2009, c. 2, §89 (COR). 2013, c. 424, Pt. B, §11 (AMD).

§4694. PRINTED NOTICE

The following notice shall appear, in conspicuous type, on the front page of the disclosure statement:

> DISCLOSURE REQUIRED BY MAINE LAW The information contained in this disclosure statement has not been verified by the State of Maine. The State has not reviewed and does not approve or endorse any business opportunity. The disclosure statement contains information which should be carefully read before agreeing to purchase a business opportunity.

[1979, c. 571, (NEW).]

SECTION HISTORY
1979, c. 571, (NEW).

§4695. BONDS AND ESCROW ACCOUNTS

All sellers shall obtain either a surety bond issued by a surety company authorized to do business in this State or have established an escrow account with a licensed bank or savings institute located in this State. The surety bond or escrow account shall be in an amount of not less than $30,000. [1979, c. 571, (NEW).]

Any person who is damaged by a violation of any provision of this chapter, by the seller's breach of the contract for the business opportunity or by the seller's violation of Title 5, section 207, relating to the sale, offer for sale or promotion of a business opportunity may bring an action against the bond or escrow account to recover damages suffered. The Attorney General may bring an action against the bond or escrow account under Title 5, section 209, to recover damages relating to the sale or offer for sale of a business opportunity suffered by persons in this State. The aggregate liability of the surety or bank or savings institute shall be only for actual damages and shall not exceed the amount of the bond or escrow account. [1979, c. 571, (NEW).]

1. **Termination.** Such a bond or escrow account shall not be terminated, cancelled or returned to the seller until:

A. Twelve months following expiration of the seller's registration under section 4696; and [1979, c. 571, (NEW).]

B. The Securities Administrator certifies to the surety company issuing the bond or the licensed bank or savings institute holding the escrow account that it has no knowledge of any outstanding judgment, claims or notices of claims against the seller in this State. [1989, c. 542, §2 (AMD).]

[1989, c. 542, §2 (AMD) .]

2. **Exception.** No seller maintaining a permanent place of business in this State shall be required either to maintain an escrow account or bond or to issue the disclosure contained in section 4693, subsection 2.

[1979, c. 571, (NEW) .]

SECTION HISTORY
1979, c. 571, (NEW). 1985, c. 597, §2 (AMD). 1989, c. 542, §2 (AMD).

§4696. REGISTRATION

Every seller shall register with the Securities Administrator prior to selling, offering to sell, advertising or undertaking any other act relating to the promotion of business opportunities in this State. Registration shall be complete upon paying a $25 fee, filing a copy of the disclosure statement required by section 4692 and providing evidence of a bond or escrow account satisfying the requirements of section 4695. The seller shall update the disclosure statement as material information changes. [1989, c. 542, §3 (AMD).]

SECTION HISTORY
1979, c. 571, (NEW). 1985, c. 597, §3 (AMD). 1989, c. 542, §3 (AMD).

§4697. RENEWAL OF REGISTRATION

A registration is effective for one year commencing on the date of effectiveness. A seller may annually renew the registration by paying a $10 fee, filing a copy of a current disclosure statement and providing evidence of a bond or escrow account satisfying the requirements of section 4695. Failure to renew at the close of the one-year period of effectiveness results in expiration of the registration. [1991, c. 210, §6 (AMD).]

SECTION HISTORY
1979, c. 571, (NEW). 1991, c. 210, §6 (AMD).

§4698. RIGHT OF AVOIDANCE

A purchaser may avoid a contract for the purchase of a business opportunity by giving written notice of avoidance to the seller, by ordinary mail postage prepaid within 3 full business days following the day on which the contract was made. The notice shall be sufficient if addressed to the seller at the address given either in the disclosure statement or on the contract. Notice of avoidance shall be effective upon deposit in the United States mail. The notice of avoidance need not take a particular form and is sufficient if it expresses the intention of the purchaser not to be bound by the contract. [1979, c. 571, (NEW).]

1. **Return of goods.** Within 20 days after a notice of avoidance is effective, the purchaser shall tender to the seller any goods or commodities delivered to the purchaser pursuant to the contract. Tender is sufficient if the purchaser makes the goods or commodities available to the seller at the purchaser's residence or business. If the seller fails to take possession of the goods or commodities within 20 days after the notice of avoidance is effective, the goods or commodities become the property of the purchaser without obligation to pay for them.

[1991, c. 210, §7 (AMD) .]

2. **Return of funds.** Within 20 days after a notice of avoidance is effective, the seller shall return to the purchaser the full amount of any fees or deposits which were given by the purchaser to the seller or an affiliated person under the contract, unless the purchaser refuses to tender goods or commodities pursuant to subsection 1.

[1979, c. 571, (NEW) .]

SECTION HISTORY
1979, c. 571, (NEW). 1991, c. 210, §7 (AMD).

§4699. PROHIBITED ACTS

It shall be unlawful for any seller: [1979, c. 571, (NEW).]

1. **Noncompliance.** To fail to comply with any provision of this chapter, including, but not limited to:

A. Failure to register pursuant to sections 4696 and 4697; [1979, c. 571, (NEW).]

B. Failure to provide all purchasers with the disclosure statement required by section 4692; [1979, c. 571, (NEW).]

C. Failure to secure a bond or an escrow account as required by section 4695; and [1979, c. 571, (NEW).]

D. Failure to return funds after a contract is avoided pursuant to section 4698; [1979, c. 571, (NEW).]

2. **Misrepresentation of sales, income and profits.** To make any representation concerning estimated, projected or actual sales, income and gross or net profits unless, at the time the representation is made, the representation is relevant to the geographic market in which the business opportunity is to be located, a reasonable basis exists for the representations, the seller has in its possession material which constitutes a reasonable basis for the representation and the seller makes that material available to any prospective purchaser or the State upon their request;

[1979, c. 571, (NEW) .]

3. **Use of trademark.** To use the trademark, service mark, trade name, logotype, advertising or other commercial symbol of any business which does not either control the ownership interest in the seller or accept responsibility for all misrepresentations made by the seller in regard to the business opportunity, unless the seller notifies all prospective purchasers, in writing, that the owner of the commercial symbol is not involved in the sales of the business opportunities; and

[1979, c. 571, (NEW) .]

4. **Misleading representations.** To make any false, misleading or deceptive representations concerning the business opportunity.

[1979, c. 571, (NEW) .]

SECTION HISTORY
1979, c. 571, (NEW).

§4699-A. INVESTIGATORY POWERS OF SECURITIES ADMINISTRATOR

1. **Investigations.** The Securities Administrator may conduct investigations, within or outside the State, as the Securities Administrator finds necessary or appropriate to:

A. Determine whether a person has violated, or is about to violate, a provision of this chapter or a rule or order of the Securities Administrator; or [2013, c. 224, §1 (NEW).]

B. Aid in enforcement of this chapter. [2013, c. 224, §1 (NEW).]

[2013, c. 224, §1 (NEW) .]

2. **Publication.** The Securities Administrator may publish information concerning a violation of this chapter or a rule or order of the Securities Administrator.

[2013, c. 224, §1 (NEW) .]

3. **Power of Securities Administrator.** For purposes of an investigation or proceeding under this chapter, the Securities Administrator or the Securities Administrator's designee may administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses, take evidence and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records that the Securities Administrator or designee considers relevant or material to the investigation or proceeding.

[2013, c. 224, §1 (NEW) .]

4. **Court order.** If a person does not give testimony or produce the documents required by the Securities Administrator or the Securities Administrator's designee pursuant to an administrative subpoena, the Securities Administrator or designee may apply for a court order compelling compliance with the subpoena or the giving of the required testimony. The request for order of compliance may be addressed to either:

A. The Superior Court located in Kennebec County or the Superior Court where service may be obtained on a person refusing to testify or produce the documents required by the Securities Administrator, if the person is within the State; or [2013, c. 224, §1 (NEW).]

B. The appropriate court of the state having jurisdiction over the person refusing to testify or produce the documents required by the Securities Administrator, if the person is outside the State. [2013, c. 224, §1 (NEW).]

[2013, c. 224, §1 (NEW) .]

SECTION HISTORY
2013, c. 224, §1 (NEW).

§4700. REMEDIES

1. **Violation.** Any violation of this chapter shall constitute a violation of Unfair Trade Practices, Title 5, chapter 10.

[1979, c. 571, (NEW) .]

2. **Class D crime.** An intentional violation of this chapter shall be a Class D crime.

[1979, c. 571, (NEW) .]

3. **Temporary restraining order.** Upon application by the Attorney General, the Superior Court shall issue a temporary restraining order, under Unfair Trade Practices, Title 5, section 209, enjoining any business opportunity seller who has committed an act prohibited by section 4699, subsection 1, paragraph A, B or C, from engaging in any conduct relating to the sale, offering for sale or promotion of business opportunities

in this State until such time as the seller satisfies the court that it has complied with the provisions of this chapter. The Superior Court shall grant such a temporary restraining order without requiring a showing of immediate and irreparable harm or injury.

[1991, c. 210, §8 (AMD) .]

4. **Administrative orders; rules; forms.** The Securities Administrator may make, amend and rescind rules, forms and orders as are necessary to carry out the provisions of this chapter, including rules and forms governing disclosure documents, applications and reports and defining any terms, whether or not used in this chapter insofar as the definitions are not inconsistent with this chapter. For the purpose of rules and forms, the Securities Administrator may classify business opportunities, persons and matters within his jurisdiction and prescribe different requirements for different classes.

[1989, c. 542, §4 (AMD) .]

5. **Cease and desist orders.** Whenever it appears to the Securities Administrator that any person has engaged in or is about to engage in any act or practice constituting a violation of this chapter or any rule or order under this chapter, the Securities Administrator may issue an order directing the person to cease and desist from continuing the act or practice. Any person named in a cease and desist order issued by the Securities Administrator may, within 30 days after receipt of the order, file a written request for a hearing with the Securities Administrator. If the Securities Administrator does not receive a written request for a hearing within the time specified, the cease and desist order will become permanent and the person named in the order will be deemed to have waived all rights to a hearing.

[1989, c. 542, §4 (AMD) .]

6. **Rescission; surety bond.** Any person who violates this chapter or any rule or order under this chapter, is liable to the purchaser who may sue either at law or in equity for rescission, for recovery of all money or other valuable consideration paid for the business opportunity and for actual damages, together with interest at the legal rate from the date of sale, reasonable attorney's fees and court costs.

The purchaser may sue the surety of the bond, either at law or in equity to recover all money or other valuable consideration paid for the business opportunity and actual damages, together with interest at the legal rate from the date of sale, reasonable attorney's fees and court costs for any violation of this chapter, of any rule or order under this chapter committed by a seller or for any breaches of any business opportunity contract or for any fraudulent practices or unlawful representation, whether or not by way of advertising, perpetrated by a seller in connection with the offer or sale of any business opportunity. The liability of the surety shall not exceed the amount of the bond.

[1985, c. 597, §4 (NEW) .]

SECTION HISTORY
1979, c. 571, (NEW). 1985, c. 597, §4 (AMD). 1989, c. 542, §4 (AMD). 1991, c. 210, §8 (AMD).

§4700-A. SERVICE OF PROCESS

The Securities Administrator shall be an agent of each seller who sells, offers for sale, advertises or promotes business opportunities in this State for service of any process, notice or demand required or permitted by law to be served and this service shall be binding upon the seller. Service of any such process, notice or demand shall be made as provided for service upon the Secretary of State under the Maine Rules of Civil Procedure, Rule 4(d)(8). [1989, c. 542, §5 (AMD).]

SECTION HISTORY
1979, c. 571, (NEW). 1985, c. 597, §5 (AMD). 1989, c. 542, §5 (AMD).

§4700-B. DISPOSAL OF FEES

All fees received under this chapter shall be paid to the Treasurer of State to be used for carrying out this chapter. Any balance of these fees shall not lapse, but shall be carried forward as a continuing account to be expended for the same purposes in the following fiscal years. [1979, c. 571, (NEW).]

SECTION HISTORY
1979, c. 571, (NEW).

Chapter 69-C: MAINE WATER WELL COMMISSION

§4700-E. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1991, c. 455, Pt. B, §1 (NEW).]

1. **Apprentice well driller.** "Apprentice well driller" means a person who is engaged to work at and learn the trade of well drilling under the direct supervision of a master or journeyman well driller.

[1993, c. 25, §2 (AMD); 1993, c. 25, §15 (AFF) .]

1-A. **Apprentice pump installer.** "Apprentice pump installer" means a person who is engaged to work at and learn the trade of water well pump installation under the direct supervision of a master or journeyman pump installer. A person who is licensed under chapter 49 as a master plumber is not required to register with the commission as an apprentice pump installer.

[2001, c. 209, Pt. B, §2 (NEW) .]

2. **Commission.** "Commission" means the Maine Water Well Commission created under section 4700-G.

[2001, c. 209, Pt. B, §2 (AMD) .]

3. **Department.** "Department" means the Department of Health and Human Services.

[1991, c. 455, Pt. B, §1 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

3-A. **Geotechnical driller.**

[2001, c. 209, Pt. B, §2 (RP) .]

3-B. **Journeyman pump installer.** "Journeyman pump installer" means a person doing the work of pump installation, repair or replacement in water wells who is in the employment of a master pump installer. A person who is licensed under chapter 49 as a master plumber is not required to register with the commission as a journeyman pump installer.

[2001, c. 209, Pt. B, §2 (NEW) .]

3-C. **Geothermal heat exchange well.** "Geothermal heat exchange well" means a hole drilled, driven or bored into the earth for the purpose of using the heat exchange capacity of the earth for heating and cooling.

[2009, c. 153, §1 (NEW) .]

3-D. **Geothermal heat exchange well driller.** "Geothermal heat exchange well driller" means a person, firm or corporation engaged in the work of drilling, driving or boring geothermal heat exchange wells.

[2009, c. 153, §2 (NEW) .]

3-E. **Geothermal heat exchange well pump installer.** "Geothermal heat exchange well pump installer" means a person who is engaged to work at and learn the trade of geothermal heat exchange well pump installation.

[2009, c. 153, §3 (NEW) .]

4. **Journeyman well driller.** "Journeyman well driller" means a person doing the work of drilling, driving or boring wells who is in the employment of a master well driller.

[1993, c. 25, §4 (AMD); 1993, c. 25, §15 (AFF) .]

4-A. **Master pump installer.** "Master pump installer" means a person, firm or corporation engaged in the installation, replacement or repair of a pump in a water well. The licensure of a master pump installer under this chapter must specify the name of the person licensed. In the case of a firm, the person licensed as a master pump installer must be a member or employee of the firm. In the case of a corporation, the person licensed as a master pump installer must be an employee of the corporation or an officer of the corporation. A person who is licensed under chapter 49 as a master plumber is not required to register with the commission as a master pump installer.

[2001, c. 209, Pt. B, §2 (NEW) .]

5. **Master well driller.** "Master well driller" means a person, firm or corporation engaged in the business of drilling, driving or boring wells. The licensure of a master well driller under this chapter must specify the name of the person licensed. In the case of a firm, the person licensed as a master well driller must be a member or employee of the firm. In the case of a corporation, the person licensed as a master well driller must be an employee of the corporation or an officer of the corporation.

[2001, c. 209, Pt. B, §2 (AMD) .]

6. **Pump or pump system.** For purposes of a water well, "pump" or "pump system" means mechanical equipment or a device used to remove water from a well including all piping and wiring up to the existing equipment in the structure. For the purposes of a geothermal heat exchange well, "pump" or "pump system" means the mechanical equipment or device used to move fluid from the geothermal heat exchange well, including all piping and wiring, up to the existing equipment in the structure.

[2009, c. 153, §4 (AMD) .]

6-A. **Pump installation company.** "Pump installation company" means a person, firm, partnership or corporation that is engaged in the trade of water well pump installation, repair or replacement.

[2001, c. 209, Pt. B, §2 (NEW) .]

7. **Pump installer.** "Pump installer" means an apprentice pump installer, journeyman pump installer or master pump installer.

[2001, c. 209, Pt. B, §2 (AMD) .]

8. **Well or water well.** "Well" or "water well" means any hole drilled, driven or bored into the earth used to extract drinking water. The terms "well" and "water well" do not include:

A. Dug wells; [1993, c. 25, §4 (NEW); 1993, c. 25, §15 (AFF).]

B. Monitoring wells; [1993, c. 25, §4 (NEW); 1993, c. 25, §15 (AFF).]

C. Wells constructed exclusively for the relief of artesian pressure at hydroelectric projects; [1993, c. 25, §4 (NEW); 1993, c. 25, §15 (AFF).]

D. Wells constructed for temporary dewatering purposes; [1993, c. 25, §4 (NEW); 1993, c. 25, §15 (AFF).]

E. Wells constructed for the purposes of extracting oil, gas or brine; and [1993, c. 25, §4 (NEW); 1993, c. 25, §15 (AFF).]

F. Wells on private property for private use that are constructed by the property owner or lessee of the property. [1993, c. 25, §4 (NEW); 1993, c. 25, §15 (AFF).]

[1993, c. 25, §4 (AMD); 1993, c. 25, §15 (AFF) .]

9. **Well driller.** "Well driller" means an apprentice well driller, journeyman well driller or master well driller.

[1993, c. 25, §4 (AMD); 1993, c. 25, §15 (AFF) .]

10. **Well drilling contractor.**

[1993, c. 25, §15 (AFF); 1993, c. 25, §5 (RP) .]

11. **Well drilling company.** "Well drilling company" means a person, firm, partnership or corporation that owns or otherwise operates any mechanical equipment used to drill, drive or bore water wells or geothermal heat exchange wells.

[2009, c. 153, §5 (AMD) .]

SECTION HISTORY
1991, c. 455, §B1 (NEW). 1993, c. 25, §§2-5 (AMD). 1993, c. 25, §15 (AFF). 2001, c. 209, §B2 (AMD). 2003, c. 689, §B6 (REV). 2009, c. 153, §§1-5 (AMD).

§4700-F. EXCLUSIONS

1. **Applicability.** The provisions of this chapter apply to all water wells constructed in the State after January 1, 1994. The provisions of this chapter relating to geothermal heat exchange well construction, geothermal heat exchange well pump installation and licensing requirements for geothermal heat exchange well drillers and geothermal heat exchange well pump installers apply after final adoption of initial rules pursuant to section 4700-I, subsection 2-A.

A. [1993, c. 25, §6 (RP).]

B. [1993, c. 25, §6 (RP).]

C. [1993, c. 25, §6 (RP).]

D. [1993, c. 25, §6 (RP).]

[2009, c. 153, §6 (AMD) .]

SECTION HISTORY
1991, c. 455, §B1 (NEW). 1993, c. 25, §6 (AMD). 2009, c. 153, §6 (AMD).

§4700-G. CREATION OF COMMISSION

1. **Establishment of commission.** The Maine Water Well Commission, as authorized by Title 5, chapter 379, is established to carry out the provisions of this chapter. The purpose of the commission is to provide the public with the highest quality drinking water possible by ensuring that water wells and geothermal heat exchange wells are drilled, constructed, altered or abandoned in a manner that protects groundwater from contamination.

[2009, c. 153, §7 (AMD) .]

2. **Membership.** The commission consists of the director of the division of environmental health within the Department of Health and Human Services or the director's designee; the Director of the Division of Geology, Natural Areas and Coastal Resources within the Department of Agriculture, Conservation and Forestry or the director's designee; the Commissioner of Transportation or the commissioner's designee; and 4 public members, 3 of whom must be well drillers.

[2013, c. 405, Pt. C, §15 (AMD) .]

3. **Appointing authority.** The Governor shall appoint the public members. Members who are well drillers must be appointed from among nominees selected by the Governor or the Maine Ground Water Association.

[2001, c. 209, Pt. B, §5 (AMD) .]

4. **Chair.** The commission shall appoint a member to serve as the commission's chair for a term of 2 years.

[1991, c. 455, Pt. B, §1 (NEW) .]

5. **Terms of office.** The term of the public members is 5 years. Terms must be staggered so that no more than 2 public member terms expire in any one year. Members who are not public members serve a term coincident with their term of office. The Governor shall fill any vacant seat on the commission by a qualified person for the remainder of the unexpired term. A member of the commission may be removed from office for cause by the Governor.

[2001, c. 209, Pt. B, §5 (AMD) .]

6. **Administrative provision.** The department shall administer the affairs and activities of the commission, keep all books and records, excluding data reports. All appropriations for use of the commission must be made to the department. The Department of Agriculture, Conservation and Forestry, Division of Geology, Natural Areas and Coastal Resources shall keep all well data reports and work with the department in the administration of the commission's activities.

[2013, c. 405, Pt. C, §16 (AMD) .]

7. **Records.** The commission shall keep accurate records of its proceedings and shall maintain the following information:

A. The names and addresses of all persons licensed under this chapter; and [2001, c. 209, Pt. B, §6 (AMD).]

B. An accounting of all money received or disbursed by the commission. [1991, c. 455, Pt. B, §1 (NEW).]

All records and lists under this subsection are public documents, open for inspection during business hours.

[2001, c. 209, Pt. B, §6 (AMD) .]

8. **Compensation.** Public members of the commission receive the sum of $50 per meeting plus any necessary traveling expenses for actual attendance at any commission meeting.

[1991, c. 455, Pt. B, §1 (NEW) .]

9. **Meetings.** The commission shall meet at least 2 times per calendar year at the call of the chair. The chair may call additional meetings as the chair determines necessary and shall call a meeting at the request of any 2 members of the commission.

[2013, c. 588, Pt. A, §41 (AMD) .]

SECTION HISTORY
1991, c. 455, §B1 (NEW). 1993, c. 25, §7 (AMD). 1995, c. 502, §E32 (AMD). 1999, c. 556, §§28, 29 (AMD). 2001, c. 209, §§B3-6 (AMD). 2003, c. 689, §B6 (REV). 2009, c. 153, §§7, 8 (AMD). 2011, c. 655, Pt. KK, §§19, 20 (AMD). 2011, c. 655, Pt. KK, §34 (AFF). 2013, c. 405, Pt. C, §§15, 16 (AMD). 2013, c. 588, Pt. A, §41 (AMD).

§4700-H. POWERS AND DUTIES

The commission has the following powers and duties. [1991, c. 455, Pt. B, §1 (NEW).]

1. **Hold hearings.** The commission shall conduct hearings in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375.

[1991, c. 455, Pt. B, §1 (NEW) .]

1-A. **Administer examinations.** The commission shall develop and administer all examinations required by section 4700-I, subsection 4. All examinations must be written examinations and must test an applicant's knowledge of the following matters as is appropriate for the license or license endorsement for which the application is made:

A. Principles of water well drilling; [2009, c. 153, §9 (NEW).]

B. Principles of geothermal heat exchange well drilling; [2009, c. 153, §9 (NEW).]

C. Abandonment of water wells; [2009, c. 153, §9 (NEW).]

D. Abandonment of geothermal heat exchange wells; [2009, c. 153, §9 (NEW).]

E. Installation of water well pump systems; [2009, c. 153, §9 (NEW).]

F. Installation of geothermal heat exchange well pump systems; and [2009, c. 153, §9 (NEW).]

G. The code of performance adopted by the commission. [2009, c. 153, §9 (NEW).]

[2009, c. 153, §9 (AMD) .]

2. **Licensing.** The commission shall license well drillers, geothermal heat exchange well drillers, well drilling companies, geothermal heat exchange well pump installers, pump installers and pump installation companies and may initiate action for the revocation or suspension of such licenses.

[2009, c. 153, §10 (AMD) .]

3. **Investigate complaints.** The commission shall investigate complaints and cases of noncompliance with, or violation of, this chapter or of the code of performance adopted by the commission. Complainants must petition the commission in writing within 24 months of completion of a water well or geothermal heat exchange well or the installation, repair or replacement of a pump system. At its discretion, the commission may request that an investigation of an alleged violation be conducted by a neutral qualified individual, acceptable to both the alleged violator and the commission, who shall report to the commission. At its discretion, the commission may refer a complaint to the Attorney General.

[2009, c. 153, §11 (AMD) .]

4. **Revocation and suspension of license.** If the commission determines a violation of this chapter, the code of performance adopted by the commission or other laws and rules in effect, including for a well driller or a well drilling company the water well information laws under Title 12, section 550-B, has occurred, the commission shall notify the responsible well driller, geothermal heat exchange well driller, well drilling company, geothermal heat exchange well pump installer, pump installer or pump installation company by certified or registered mail of the violation. The commission may order the responsible party or parties to correct, within 48 hours of notification, any violation it determines to be a significant threat to public health, including, but not limited to, potential contamination by pathogenic organisms. The commission may order that all other violations be corrected within a period of 60 days following receipt of notification. If the violation is not corrected within 60 days, or within 48 hours for significant threats to public health, the commission may revoke or suspend the license of the responsible party or parties. A licensee who receives a written notice of a violation or of a revocation or suspension of a license under this subsection may request a hearing before the commission. The commission shall conduct such hearings and issue its decision within 30 days of the request. A decision of the commission under this subsection is a final agency action. The commission shall adopt rules governing criteria for license reinstatement. Rules adopted by the commission pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2009, c. 153, §12 (AMD) .]

5. **Adopt code of performance.** The commission shall adopt rules establishing a minimum code of performance for well drillers, pump installers, geothermal heat exchange well drillers and geothermal heat exchange well pump installers. The code of performance must set forth appropriate minimum standards of professional conduct for well drillers, pump installers, geothermal heat exchange well drillers and geothermal heat exchange well pump installers.

[2009, c. 153, §13 (AMD) .]

6. **Levy fines.** The commission may levy fines for violations of the code of performance adopted by the commission of not more than $1,000 per violation.

[2009, c. 153, §14 (AMD) .]

7. **Order well abandonment.** The commission shall adopt rules establishing procedures for determining that a water well or geothermal heat exchange well must be abandoned because of prior contamination or because it has been constructed in violation of existing regulations and standards, can not be altered or repaired to meet existing regulations or standards and poses a significant threat to public health or groundwater contamination. Rules adopted by the commission pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2009, c. 153, §15 (AMD) .]

SECTION HISTORY
1991, c. 455, §B1 (NEW). 1993, c. 25, §§8,9 (AMD). 1993, c. 25, §15 (AFF). 2001, c. 209, §§B7-9 (AMD). 2009, c. 153, §§9-15 (AMD).

§4700-I. LICENSURE AND FEES

Effective January 1, 1994, a person may not participate in the physical construction of a water well for compensation or any public drinking water well unless licensed under this section. After final adoption of initial rules pursuant to subsection 2-A, a person may not participate in the physical construction of a geothermal heat exchange well for compensation unless licensed under this section. [2009, c. 153, §16 (AMD).]

1. **Fees.** The commission shall establish license fees sufficient to recover reasonable costs of administering this chapter, including costs associated with the development and administration of examinations. License fees are not required for apprentice well driller or apprentice pump installer licenses.

[2001, c. 209, Pt. B, §10 (AMD) .]

2. **Licensure.** Except as provided in subsection 2-A, an applicant for licensure shall submit to the commission, on a form provided by the commission, a written application for licensure containing such information as the commission requires. A person who holds a valid license as provided for in this section must be in the charge of a licensed well drilling company or pump installation company in order to actively practice well drilling or pump installation, repair or replacement. A company license is valid only while the company employs at least one licensed master well driller for a well drilling company or one master pump installer for a pump installation company. The commission shall license an applicant for well driller licensure as either a master well driller or a journeyman well driller and applicants for pump installer licensure as either a master pump installer or a journeyman pump installer, based on the following criteria.

A. A master well driller must have a minimum of 3 years experience in well drilling and have worked an average of 1,000 hours per year as a journeyman well driller for each of those years. [1993, c. 25, §10 (AMD); 1993, c. 25, §15 (AFF).]

B. A journeyman well driller must have at least one year experience in well drilling and have worked at least 1,000 hours during that year as an apprentice well driller. [1993, c. 25, §10 (AMD); 1993, c. 25, §15 (AFF).]

C. A master pump installer must have a minimum of 3 years experience as a pump installer and have worked at least 350 hours as a pump installer during each of those years. [2001, c. 209, Pt. B, §10 (AMD).]

D. [1993, c. 25, §15 (AFF); 1993, c. 25, §10 (RP).]

E. A journeyman pump installer must have at least one year experience in pump installing and have worked at least 350 hours during that year as an apprentice pump installer. [2001, c. 209, Pt. B, §10 (NEW).]

F. A well drilling company must be issued a license upon presentation to the commission of a valid master well driller license issued to and held by the owner or an employee of the firm, partnership or corporation. [2001, c. 209, Pt. B, §10 (NEW).]

G. A pump installation company must be issued a license upon presentation to the commission of a valid master pump installer license issued to and held by the owner or an employee of the firm, partnership or corporation. [2001, c. 209, Pt. B, §10 (NEW).]

The commission shall license a well driller or pump installer applicant who is not eligible for licensure under paragraphs A to E as an apprentice.

[2009, c. 153, §17 (AMD) .]

2-A. **Geothermal heat exchange well drillers and geothermal heat exchange well pump installers; licensure.** The commission shall adopt rules establishing a licensing structure for geothermal heat exchange well drillers and geothermal heat exchange well pump installers. The rules may allow licensure by endorsement. After adoption of the initial rules, rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. The initial rules must be adopted through major substantive rulemaking as defined in Title 5, chapter 375, subchapter 2-A. The commission shall consult with appropriate departments and agencies, including the Department of Environmental Protection, during the rule-making process.

[2009, c. 153, §18 (NEW) .]

3. **Term of license.** Well drillers, geothermal heat exchange well drillers, geothermal heat exchange well pump installers and pump installers must be licensed annually. All licenses expire on December 31st of each year. Any person who is a well driller or pump installer on the effective date of this Act is deemed to be licensed.

[2009, c. 153, §19 (AMD) .]

4. **Examinations.** After January 1, 1994, a person must successfully complete a written examination administered by the commission in order to:

A. Initially be licensed as a journeyman or master pump installer or as a journeyman or master well driller; [2001, c. 209, Pt. B, §10 (AMD).]

B. Upgrade from an apprentice to a journeyman well driller or an apprentice to a journeyman pump installer; and [2001, c. 209, Pt. B, §10 (AMD).]

C. Upgrade from a journeyman to a master well driller or a journeyman to a master pump installer. [2001, c. 209, Pt. B, §10 (AMD).]

A person licensed under chapter 49 as a master plumber is not required to complete an examination to perform the work of a pump installer.

[2001, c. 209, Pt. B, §10 (AMD) .]

4-A. **Examinations for geothermal heat exchange well drillers and geothermal heat exchange well pump installers.** After final adoption of initial rules pursuant to subsection 2-A, the commission may require a person to successfully complete a written examination administered by the commission in order to be licensed as a geothermal heat exchange well driller or a geothermal heat exchange well pump installer.

[2009, c. 153, §20 (NEW) .]

5. **Waiver.** Notwithstanding this section, in cases in which the commission finds the presence of exigent circumstances, the commission may grant a waiver of the requirements of this section and may authorize:

A. A person who has 5 years or more of well drilling experience of at least 1,000 hours in each of those 5 years under the supervision of a master well driller to sit for the master well driller examination under subsection 4 and to be licensed as a master well driller; and [2007, c. 207, §1 (NEW).]

B. A person who has 5 years or more of pump installation experience of at least 350 hours in each of those 5 years under the supervision of a master pump installer to sit for the master pump installer examination under subsection 4 and to be licensed as a master pump installer. [2007, c. 207, §1 (NEW).]

[2007, c. 207, §1 (NEW) .]

SECTION HISTORY
1991, c. 455, §B1 (NEW). 1993, c. 25, §§10,11 (AMD). 1993, c. 25, §15 (AFF). 2001, c. 209, §B10 (AMD). 2007, c. 207, §1 (AMD). 2009, c. 153, §§16-20 (AMD).

§4700-J. LICENSURE; WELL DRILLERS AND PUMP INSTALLERS

Effective January 1, 1994, a person may not engage in the business of constructing water wells within the State or engage in the installation, replacement or repair of a pump in a water well unless licensed with the commission. After final adoption of initial rules pursuant to section 4700-I, subsection 2-A, a person may not engage in the business of constructing geothermal heat exchange wells or engage in the installation, replacement or repair of a pump in a geothermal heat exchange well unless licensed with the commission. An applicant for licensure must complete an application form supplied by the commission, successfully complete

any examination required by this chapter and pay an annual license fee established by the commission. The person so licensed shall display on each side of the drilling rig or the pump installer vehicle a seal issued by the commission indicating that person's license number and the current year of licensure. A person licensed under chapter 49 as a master plumber is not required to be licensed with the commission to perform the work of a pump installer. [2009, c. 652, Pt. A, §45 (AMD).]

1. **Contractor.**

[1993, c. 25, §12 (RP) .]

SECTION HISTORY
1991, c. 455, §B1 (NEW). 1993, c. 25, §12 (RPR). 2001, c. 209, §B11 (AMD). 2009, c. 153, §21 (AMD). 2009, c. 652, Pt. A, §45 (AMD).

§4700-K. COMPLIANCE WITH OTHER LAWS AND RULES

Notwithstanding this chapter, all water wells and geothermal heat exchange wells must be constructed and maintained in accordance with all other laws and rules in effect, including for water wells the water well information laws, Title 12, section 550-B. [2009, c. 153, §22 (AMD).]

SECTION HISTORY
1991, c. 455, §B1 (NEW). 2009, c. 153, §22 (AMD).

§4700-L. PENALTIES

1. **Fine.** Any person, company, firm, partnership or corporation who installs, alters, repairs or replaces a water well, geothermal heat exchange well or pump system without being licensed as provided in this chapter or in violation of the code of performance adopted by the commission pursuant to section 4700-A, subsection 5, except for an apprentice well driller or an apprentice pump installer as set forth in this chapter, or any person, firm, partnership or corporation who procures a license as provided in this chapter wrongfully or by fraud commits a civil violation punishable by a fine of not more than $1,000.

[2009, c. 153, §23 (AMD) .]

2. **Injunction.** The State may bring action in Superior Court to enjoin any person, firm, partnership or corporation from violating this chapter, regardless of whether proceedings have been or may be instituted in the District Court or whether civil proceedings have been or may be instituted.

[2001, c. 209, Pt. B, §12 (NEW) .]

3. **Exclusion.** This chapter does not prevent a person from making water well, geothermal heat exchange well or pump system installations, alterations, repairs or replacements in a single-family residence occupied by that person or to be occupied by that person as a bona fide personal abode as long as the installation, alteration, repair or replacement conforms to the standards set forth in this chapter and any rules adopted by the commission or the department.

[2009, c. 153, §24 (AMD) .]

SECTION HISTORY
1991, c. 455, §B1 (NEW). 2001, c. 209, §B12 (RPR). 2009, c. 153, §§23, 24 (AMD).

§4700-M. RECIPROCITY

The commission may issue a license without examination, in a comparable classification, to any person who holds a registration or license in any state, territory or possession of the United States or any country, if the commission determines that the requirements for registration or licensure of well drillers, geothermal heat exchange well drillers, geothermal heat exchange well pump installers or pump installers under which the person's registration or license was issued do not conflict with this chapter or the code of performance adopted by the commission under this chapter. [2009, c. 153, §25 (AMD).]

SECTION HISTORY
1993, c. 25, §13 (NEW). 2001, c. 209, §B13 (AMD). 2009, c. 153, §25 (AMD).

§4700-N. WELL INFORMATION

The commission shall adopt rules directing that, upon constructing, enlarging or deepening a drinking water well, the well contractor who constructed, enlarged or deepened the well shall record information in a permanent manner, including, but not limited to, the name of the contractor, the date the well was constructed, enlarged or deepened, the depth of the well and the well yield rate in gallons per minute. The rules must direct that the required information be maintained in the event that another contractor performs additional work on the well or a pump system that causes the original record of information to be altered or removed. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2003, c. 126, §1 (NEW).]

SECTION HISTORY
2003, c. 126, §1 (NEW).

Chapter 71: VETERINARIANS

Subchapter 1: GENERAL PROVISIONS

§4701. PENALTY FOR FAILURE TO COMPLY WITH CHAPTER

(REPEALED)

SECTION HISTORY
1975, c. 477, §3 (RP).

§4702. REVOCATION OF LICENSE OR REGISTRATION

(REPEALED)

SECTION HISTORY
1975, c. 477, §3 (RP).

Subchapter 2: BOARD OF EXAMINERS

§4751. BOARD OF VETERINARY EXAMINERS; APPOINTMENT; VACANCIES; COMPENSATION; EXPENSES; REMOVALS

(REPEALED)

SECTION HISTORY
1975, c. 477, §3 (RP). 1979, c. 575, §49 (AMD).

§4752. ORGANIZATION AND OFFICERS; TREASURER; EXPENSES; ANNUAL REPORT

(REPEALED)

SECTION HISTORY
1973, c. 95, §3 (RPR). 1975, c. 477, §3 (RP).

§4753. MEETINGS; EXAMINATION; FEES; TEMPORARY PERMIT

(REPEALED)

SECTION HISTORY
1967, c. 306, (AMD). 1975, c. 477, §3 (RP).

§4754. RECORDS KEPT BY BOARD

(REPEALED)

SECTION HISTORY
1975, c. 477, §3 (RP).

Subchapter 3: REGISTRATION

§4801. NO UNLICENSED PERSONS TO PRACTICE; EXCEPTIONS

(REPEALED)

SECTION HISTORY

1975, c. 477, §3 (RP).

§4802. CERTIFICATE ISSUED; ANNUAL REGISTRATION CARD AND FEE; FAILURE TO RENEW

(REPEALED)

SECTION HISTORY
1975, c. 477, §3 (RP).

§4803. CERTIFICATES TO VETERINARIANS LICENSED IN OTHER STATES; FEE

(REPEALED)

SECTION HISTORY
1975, c. 477, §3 (RP).

Chapter 71-A: MAINE VETERINARY PRACTICE ACT OF 1975

§4851. LEGISLATIVE FINDINGS

The Legislature finds and declares that the public health, safety and welfare of the State of Maine requires the exercise of the police powers of this State to safeguard the people of Maine from incompetent, dishonest or unprincipled practitioners of veterinary medicine and further that the right to practice veterinary medicine is a privilege conferred by legislative grant to persons possessed of personal and professional qualifications. [1975, c. 477, §4 (NEW).]

SECTION HISTORY
1975, c. 477, §4 (NEW).

§4852. SHORT TITLE

This chapter is known and may be cited as the "Maine Veterinary Practice Act." [1997, c. 246, §2 (AMD).]

SECTION HISTORY
1975, c. 477, §4 (NEW). 1997, c. 246, §2 (AMD).

§4853. DEFINITIONS

When used in this chapter, except where otherwise indicated by context, the following words and phrases shall have the following meaning. [1975, c. 477, §4 (NEW).]

1. **Animal.** "Animal" means any animal other than man and includes fowl, birds, fish and reptiles, wild or domestic, living or dead.

[1975, c. 477, §4 (NEW) .]

1-A. **Animal health assistant.** "Animal health assistant" means a person employed in a veterinary facility to assist a licensed veterinarian or a licensed veterinary technician, but who has neither had the formal training required for licensure nor passed the required examination for licensure as a veterinary technician.

[1993, c. 404, Pt. A, §3 (NEW) .]

2. **Animal technician.**

[1993, c. 404, Pt. A, §4 (RP) .]

3. **Board.** "Board" means the Maine State Board of Veterinary Medicine.

[1975, c. 477, §4 (NEW) .]

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

[1989, c. 450, §28 (AMD) .]

4-A. **Direct supervision.** "Direct supervision" means any time when a supervisor is on the premises or quickly and easily available.

[1997, c. 246, §3 (AMD) .]

4-B. **Indirect supervision.** "Indirect supervision" means any time when a supervisor is not on the premises, but that supervisor has issued written or oral instructions pertaining to the treatment of animal patients.

[1993, c. 404, Pt. A, §5 (NEW) .]

5. **Licensed veterinarian.** "Licensed veterinarian" means a person who is validly and currently licensed by the board to practice veterinary medicine in this State.

[1975, c. 477, §4 (NEW) .]

6. **Person.** "Person" means any individual, firm, partnership, association, joint venture, cooperative and corporation or any other group or combination acting in concert; and whether or not acting as a principal, trustee, fiduciary, receiver or as any other kind of legal or personal representative, or as the successor in interest, assignee, agent, factor, servant, employee, director, officer or any other representative of such person.

[1975, c. 477, §4 (NEW) .]

7. **Practice of veterinary medicine.** "Practice of veterinary medicine" means:

A. The diagnosis, treatment, correction, change, relief or prevention of animal disease, deformity, defect, injury or other physical or mental condition, including the prescription or administration of a drug, medicine, biologic, apparatus, application, anesthetic or other imaging, therapeutic or diagnostic technique or nutritional substance or technique on, for or to any animal, including, but not limited to, acupuncture, dentistry, homeopathic or chiropractic procedures, physical or massage therapy, surgery including cosmetic surgery, implanting of microchips or similar devices or any manual, mechanical, biological or chemical procedure used for pregnancy testing or correcting sterility or infertility; [1997, c. 246, §4 (RPR).]

B. The removal of an embryo from an animal for the purposes of transferring that embryo into another female animal or the processing or cryopreserving of that embryo. The practice of veterinary medicine does not include the removal of an embryo from the person's own animal; [1997, c. 246, §4 (RPR).]

C. The representation directly or indirectly of an ability and willingness to perform an act included in paragraph A; and [1997, c. 246, §4 (RPR).]

D. The use of any titles, word or abbreviations of letters in a manner or under circumstances that induce the belief that the person using them is legally authorized and qualified to perform any act included in paragraph A. That use is prima facie evidence of the intention to represent oneself as engaged in the practice of veterinary medicine. [1997, c. 246, §4 (NEW).]

[1997, c. 246, §4 (RPR) .]

7-A. **Relief veterinary service.** "Relief veterinary service" means the practice of veterinary medicine in Maine on a temporary basis by a qualified veterinarian not licensed to practice in this State for the purpose of substituting for a Maine-licensed veterinarian at a specified location during the licensee's absence or period of incapacitation.

[1997, c. 246, §5 (AMD) .]

8. **School of veterinary medicine.** "School of veterinary medicine" means any veterinary college or division of a college or university that offers the degree of Doctor of Veterinary Medicine or its equivalent and that conforms to the standards required by the Maine State Board of Veterinary Medicine as provided in this chapter.

[1975, c. 477, §4 (NEW) .]

8-A. **Supervisor.** "Supervisor" means a licensed veterinarian or, if the task being supervised warrants, a veterinary technician.

[1993, c. 404, Pt. A, §5 (NEW) .]

9. **Veterinarian.** "Veterinarian" means a person who has received a doctor's degree in veterinary medicine from a school of veterinary medicine.

[1975, c. 477, §4 (NEW) .]

10. **Veterinary medicine.** "Veterinary medicine" includes veterinary surgery, obstetrics, dentistry and all other branches or specialties of veterinary medicine including all aspects of the "practice of veterinary medicine" under subsection 7.

[1997, c. 246, §6 (AMD) .]

11. **Veterinary technician.** "Veterinary technician" means a person who has completed a minimum of 2 years in a college program that is certified according to the standards adopted by the American Veterinary Medical Association's Committee on Veterinary Technician Education and Activities or an equivalent program, as determined by the board, and who has passed an examination prescribed by the board.

[1993, c. 404, Pt. A, §5 (NEW) .]

SECTION HISTORY
1975, c. 477, §4 (NEW). 1983, c. 48, §1 (AMD). 1989, c. 450, §28 (AMD). 1993, c. 404, §§A3-5 (AMD). 1997, c. 246, §§3-6 (AMD).

§4854. STATE BOARD OF VETERINARY MEDICINE

The State Board of Veterinary Medicine, as established by Title 5, section 12004-A, subsection 42, within the Department of Professional and Financial Regulation, consists of 6 members, appointed by the Governor, 5 of whom must be licensed veterinarians who are residents of this State and graduates of a veterinary school and who have been licensed to practice veterinary medicine in the State for the 5 years preceding their appointment and one public member as defined in Title 5, section 12004-A. Members are appointed for 5-year terms. Appointments of members must comply with Title 10, section 8009. A person may not serve on the board who is, or has been during the 2 years preceding appointment, a trustee or a member of the faculty or advisory board of a veterinary school. [2007, c. 402, Pt. R, §1 (AMD).]

SECTION HISTORY
1975, c. 477, §4 (NEW). 1975, c. 770, §§190,191 (AMD). 1983, c. 812, §241 (AMD). 1985, c. 748, (AMD). 1989, c. 450, §29 (AMD). 1989, c. 503, §B144 (AMD). 1989, c. 878, §A96 (RPR). 1993, c. 600, §A251 (AMD). 1997, c. 246, §7 (AMD). 2007, c. 402, Pt. R, §1 (AMD).

§4855. OFFICERS

(REPEALED)

SECTION HISTORY
1975, c. 477, §4 (NEW). 1985, c. 785, §B141 (AMD). 1993, c. 404, §A6 (AMD). 1995, c. 397, §§62,63 (AMD). 1997, c. 246, §8 (AMD). 2007, c. 402, Pt. R, §2 (RP).

§4856. MEETINGS; CHAIR

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. [2013, c. 246, Pt. B, §13 (AMD).]

SECTION HISTORY
1975, c. 477, §4 (NEW). 1997, c. 246, §9 (AMD). 2007, c. 402, Pt. R, §3 (AMD). 2013, c. 246, Pt. B, §13 (AMD).

§4857. REMOVAL

Members of the board may be removed by the Governor for cause, after notice and hearing. [1989, c. 450, §30 (AMD).]

SECTION HISTORY
1975, c. 477, §4 (NEW). 1989, c. 450, §30 (AMD).

§4858. EXPENSES

(REPEALED)

SECTION HISTORY
1975, c. 477, §4 (NEW). 1983, c. 812, §242 (RPR). 1995, c. 397, §64 (RP).

§4859. POWERS

The board has the power to: [2007, c. 402, Pt. R, §4 (AMD).]

1. **Establish standards.** Establish, consistent with this chapter, standards of qualification for the practice of veterinary medicine in the State of Maine, and, for the purpose of section 4853, subsection 8 and section 4861, recognize schools of veterinary medicine;

[2007, c. 402, Pt. R, §4 (AMD) .]

2. **License; set standards.** Grant and deny licenses and set standards of practice for veterinarians practicing veterinary medicine in this State and for the performance of duties by veterinary technicians;

[2007, c. 402, Pt. R, §4 (AMD) .]

3. **After hearing, adopt, amend or repeal rules.** After hearing, adopt, amend or repeal rules in accordance with Title 5, chapter 375, subchapter 2, necessary to carry into effect this chapter. These rules must be made in accordance with the purpose and intent of the law and the standards set forth in this chapter and include, but are not limited to, rules concerning misconduct, fraud, advertising, standards of competency, personal conduct, standards of sanitation for the operation of veterinary hospitals, associations with other veterinarians, unprofessional conduct and qualifications for licensure. Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A;

[2011, c. 190, §9 (AMD) .]

4. **Establish schedule of fees.**

[2003, c. 251, §1 (RP) .]

5. **Conduct investigations.**

[2007, c. 402, Pt. R, §4 (RP) .]

6. **License veterinary technicians.** License veterinary technicians in accordance with procedures as the board may prescribe by rule. Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A; and

[2011, c. 190, §10 (AMD) .]

7. **Hold hearings.**

[2007, c. 402, Pt. R, §4 (RP) .]

8. **Bring proceedings.**

[2007, c. 402, Pt. R, §4 (RP) .]

9. **Veterinarian health program.** The board may establish protocols for the operation of a professional review committee as defined in Title 24, section 2502, subsection 4-A. The protocols must include the committee's reporting information the board considers appropriate regarding reports received, contracts or investigations made and the disposition of each report, as long as the committee is not required to disclose any personally identifiable information. The protocol may not prohibit an impaired veterinarian or veterinary technician from seeking alternative forms of treatment.

The board has the power to contract with other agencies, individuals, firms or associations for the conduct and operation of a veterinarian health program operated by a professional review committee.

[2011, c. 190, §11 (NEW) .]

SECTION HISTORY
1975, c. 477, §4 (NEW). 1977, c. 694, §§638,639 (AMD). 1979, c. 291, §§1,2 (AMD). 1983, c. 48, §2 (AMD). 1993, c. 404, §§A7,8 (AMD). 1995, c. 502, §H33 (AMD). 1997, c. 246, §§10-12 (AMD). 2003, c. 251, §1 (AMD). 2007, c. 402, Pt. R, §4 (AMD). 2011, c. 190, §§9-11 (AMD).

§4859-A. NOTICE AND CONDUCT OF HEARING

(REPEALED)

SECTION HISTORY
1975, c. 477, §4 (NEW). 1975, c. 623, §51A (AMD). 1979, c. 291, §3 (RP).

§4860. LICENSE REQUIRED

No person may practice veterinary medicine in this State who is not a licensed veterinarian or the holder of a valid temporary permit or permit for the performance of relief veterinary service issued by the board. This shall not apply to: [1983, c. 48, §3 (AMD).]

1. **Federal, state or local government employee.** An employee of the federal, state or local government performing his official duties.

[1975, c. 477, §4 (NEW) .]

2. **Regular student.** A person who is a regular student in a veterinary school performing duties or actions assigned by his instructors or working under the direct supervision of a licensed veterinarian during a school vacation period.

[1975, c. 477, §4 (NEW) .]

3. Person performing accepted livestock practices.

[1975, c. 477, §4 (NEW) .]

4. **Out-of-state veterinarian consulting with licensed veterinarian.** A veterinarian legally licensed in another state consulting with a licensed veterinarian in this State.

[1975, c. 623, §51-B (RPR) .]

5. **Owner or caretaker of an animal.** The owner or caretaker of an animal and the owner's regular employee caring for and treating the animal belonging to such owner, except where the ownership of the animal was transferred for purposes of circumventing this chapter.

[1975, c. 477, §4 (NEW) .]

6. **Certain faculty members.** A member of the faculty of a veterinary school performing his regular functions, or a person lecturing or giving instructions or demonstrating at a veterinary school or in connection with a continuing education course or seminar.

[1975, c. 477, §4 (NEW) .]

7. **Person applying certain chemicals.** Any person selling or applying any pesticide or insecticide for the betterment and protection of the animal.

[1975, c. 477, §4 (NEW) .]

8. **Person engaged in scientific research.** Any person engaging in bona fide scientific research which reasonably requires experimentation involving animals.

[1975, c. 477, §4 (NEW) .]

9. **Person performing artificial insemination commercially.** Any person on file with the Maine Department of Agriculture performing artificial insemination.

[1975, c. 477, §4 (NEW) .]

10. Persons performing horseshoeing and trimming of feet.

[1975, c. 477, §4 (NEW) .]

11.

[1979, c. 291, §4 (RP) .]

12. Animal and humane shelters under the supervision of a licensed Maine veterinarian.

[1975, c. 477, §4 (NEW) .]

SECTION HISTORY

1975, c. 477, §4 (NEW). 1975, c. 623, §51B (AMD). 1979, c. 291, §4 (AMD). 1983, c. 48, §3 (AMD).

§4861. APPLICATION FOR LICENSE; QUALIFICATIONS AND EXAMINATION

A person desiring a license to practice veterinary medicine in this State must make written application and pay the license fee as set under section 4863-A. The application must show that the applicant holds a doctorate degree in veterinary medicine from an approved veterinary medicine program that is recognized by the United States Department of Education and by the board, and is trustworthy and competent and provide such other information and proof as the board may establish by rule. The board may adopt rules applicable to graduates of approved veterinary medicine programs by the Commissioner of Education and rules applicable to foreign educated graduates who can demonstrate equivalent education and training. Rules adopted pursuant to this section are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A. [2007, c. 402, Pt. R, §5 (AMD).]

1. **Examinations.**

[2003, c. 251, §2 (RP) .]

1-A. **Examinations.** Examinations, written or practical, must be prepared to measure the competence of an applicant to engage in the practice of veterinary medicine. The board may also test an applicant's knowledge of the laws and rules relating to the practice of veterinary medicine. The board may require successful completion of an equivalency examination or assessment mechanism for foreign educated and trained applicants that is designed to evaluate educational equivalence, including clinical competencies and a command of the English language.

The board may employ and cooperate and contract with an organization or consultant in the preparation, administration and grading of an examination, but retains sole discretion and responsibility for determining which applicants have successfully passed the examination. The applicant shall pay the examination fee as set under section 4863-A.

[2007, c. 402, Pt. R, §5 (AMD) .]

2. **Oral or practical examination.**

[2007, c. 402, Pt. R, §5 (RP) .]

3. **Temporary permit.** The board may issue without examination a temporary permit to practice veterinary medicine in this State to a qualified applicant for license pending examination. A temporary permit issued pursuant to this subsection expires the day after the notice of results of the first examination given after the permit is issued. The applicant shall pay the temporary permit fee set under section 4863-A.

[2007, c. 402, Pt. R, §5 (AMD) .]

4. **Permit for performance of relief veterinary service.** The board may issue without examination a permit to perform relief veterinary service in this State to a qualified person who holds a doctorate degree in veterinary medicine from an approved veterinary medicine program that is recognized by the United States Department of Education and by the board or by rules of the board applicable to foreign educated graduates, and who holds a current license for the practice of veterinary medicine issued by another state, United States territory, province of Canada or other jurisdiction. The board may establish, by rule, the application process. The initial term of a permit issued under this subsection may not exceed 30 days. Extensions may be granted in the discretion of the board. The applicant shall pay the relief permit fee as set under section 4863-A.

[2007, c. 402, Pt. R, §5 (AMD) .]

5. **Licensure by endorsement.** The board shall grant a license by endorsement to a veterinarian who:

A. Has submitted a complete application; [1997, c. 246, §18 (NEW).]

B. Has paid the examination and license fee as set under section 4863-A; [2007, c. 402, Pt. R, §5 (AMD).]

C. Holds a valid license issued by another state, United States territory, province of Canada or other jurisdiction; [2007, c. 402, Pt. R, §5 (AMD).]

D. [2003, c. 251, §2 (RP).]

D-1. Has successfully passed an examination pursuant to subsection 1-A pertaining to the practice of veterinary medicine as determined by board rule. The board may require the applicant to submit to an examination covering the laws and rules pertaining to the practice of veterinary medicine in this State; and [2007, c. 402, Pt. R, §5 (AMD).]

E. Has actively practiced clinical veterinary medicine for 3,000 hours during the 3 years preceding application. [2003, c. 251, §2 (AMD).]

F. [2003, c. 251, §2 (RP).]

Notwithstanding this subsection, the board shall waive the requirement that a veterinarian pass an examination for veterinarians who have, during the 6 years preceding the application, actively practiced clinical veterinary medicine for at least 6,000 hours without disciplinary action relating to the practice of veterinary medicine by another state, United States territory or province of Canada.

[2011, c. 189, §1 (AMD) .]

SECTION HISTORY
1975, c. 477, §4 (NEW). 1977, c. 694, §640 (AMD). 1979, c. 291, §5 (AMD). 1983, c. 48, §§4,5 (AMD). 1997, c. 246, §§13-18 (AMD). 2003, c. 251, §2 (AMD). 2005, c. 347, §C1 (AMD). 2007, c. 402, Pt. R, §5 (AMD). 2011, c. 189, §1 (AMD).

§4862. STATUS OF PERSONS CURRENTLY LICENSED

(REPEALED)

SECTION HISTORY
1975, c. 477, §4 (NEW). 1997, c. 246, §19 (AMD). 2007, c. 402, Pt. R, §6 (RP).

§4863. LICENSE RENEWAL

All licenses expire annually on such date as the commissioner may designate, and may be renewed with the board by payment of the renewal fee as set under section 4863-A. [2007, c. 402, Pt. R, §7 (AMD).]

Licenses may be reinstated up to 90 days after the date of expiration upon payment of a late fee as set under section 4863-A in addition to the renewal fee. A person who submits an application for renewal more than 90 days after the license renewal date is subject to all requirements governing new applicants under this chapter, except that the board may, giving due consideration to the protection of the public, waive examination if that renewal application is received, together with the late fee, renewal fee and additional late fee as set under section 4863-A, within 2 years from the date of the expiration. [2007, c. 402, Pt. R, §7 (AMD).]

By rule the board may waive the payment of the renewal fee of a licensed veterinarian during the period when that veterinarian is on active duty with any branch of the Armed Services of the United States, not to exceed the longer of 3 years or the duration of a national emergency. [2007, c. 402, Pt. R, §7 (AMD).]

SECTION HISTORY
1975, c. 477, §4 (NEW). 1979, c. 291, §6 (AMD). 1983, c. 48, §6 (AMD). 1989, c. 450, §31 (AMD). 1991, c. 509, §25 (AMD). 1997, c. 246, §20 (AMD). 2003, c. 251, §3 (AMD). 2007, c. 402, Pt. R, §7 (AMD).

§4863-A. FEES

The Director of the Office of Professional and Occupational Regulation within the Department of Professional and Financial Regulation may establish by rule fees for purposes authorized under this chapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for any one purpose may not exceed $150 annually. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [2003, c. 251, §4 (NEW); 2011, c. 286, Pt. B, §5 (REV).]

SECTION HISTORY
2003, c. 251, §4 (NEW). 2011, c. 286, Pt. B, §5 (REV).

§4864. DENIAL OR REFUSAL TO RENEW LICENSE; DISCIPLINARY ACTION

In addition to the grounds enumerated in Title 10, section 8003, subsection 5-A, paragraph A, the board may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A for: [2007, c. 402, Pt. R, §8 (NEW).]

1. **Convictions.**

[2007, c. 402, Pt. R, §8 (RP) .]

2. **Fraud.**

[2007, c. 402, Pt. R, §8 (RP) .]

3. **Violation of drug laws.** Conviction of violation of any federal or state law regulating the possession, distribution or use of any narcotic drug or cannabis;

[1975, c. 477, §4 (NEW) .]

4. **Chronic use of drugs.** Chronic or habitual use of drugs;

[1975, c. 477, §4 (NEW) .]

5. **Insanity.**

[1979, c. 291, §7 (RP) .]

5-A. **Mental illness.** A medical finding of mental incompetency;

[1979, c. 291, §8 (NEW) .]

6. **Certain prescriptions of narcotics.** Prescribing narcotic drugs for other than accepted therapeutic purposes;

[1975, c. 477, §4 (NEW) .]

7. **Malpractice.**

[2007, c. 402, Pt. R, §8 (RP) .]

8. **Incompetence or gross negligence.**

[2007, c. 402, Pt. R, §8 (RP) .]

9. **Cruelty to animals.** The performance of any inhumane or cruel act, as established by the board and by applicable civil and criminal laws and rules in the treatment or care of any animal;

[2005, c. 347, Pt. C, §2 (AMD) .]

10. **Permitting a veterinary technician to perform prohibited acts.** Permitting any licensed veterinary technician operating under the licensee's supervision to perform any act or operation other than that permitted under section 4866;

[2007, c. 402, Pt. R, §8 (AMD) .]

11. **Unprofessional conduct.** Unprofessional conduct, as defined in the rules of the board, includes, but is not limited to, the following:

A. Advertising in any manner considered by the board to be false, misleading or otherwise deemed unprofessional; [1975, c. 477, §4 (NEW).]

B. Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of veterinary medicine; [1975, c. 477, §4 (NEW).]

C. Refusing to divulge to the board upon demand, the means, method, device or instrumentality used in the treatment of a disease, injury, ailment or infirmity of any animal; or [1997, c. 246, §22 (AMD).]

D. Fraud or dishonesty in the application or reporting of any test for disease in animals or making a false report of any contagious or infectious disease; [1975, c. 477, §4 (NEW).]

[1997, c. 246, §22 (AMD) .]

12. **Unauthorized associations.** A veterinarian may practice only in an individual capacity under that veterinarian's own name or in association with a licensed practitioner of veterinary medicine or professional association. Notwithstanding paragraph A, for purposes of this subsection, a veterinarian who has an employment relationship with a corporation or other legal entity that provides a continuum of veterinary services and treatment, including, but not limited to, diagnostic laboratory, research and development services and health and import and export certification, is considered to be lawfully practicing under that veterinarian's own name as long as that veterinarian is individually accountable for conduct under that veterinarian's license. The following are deemed unauthorized associations:

A. Except as otherwise provided in this subsection, association for the joint practice of veterinary medicine with any person, corporation or partnership not licensed to practice veterinary medicine; [2011, c. 594, §1 (AMD).]

B. Knowingly aiding and abetting in the practice of veterinary medicine any person not licensed to practice in this State; [1975, c. 477, §4 (NEW).]

C. The lending, leasing or in any other manner placing of one's license at the disposal of or in the service of any other person not licensed to practice veterinary medicine in this State; and [2007, c. 402, Pt. R, §8 (AMD).]

D. The continuance of a veterinarian directly or indirectly in the employ of or in association with any veterinarian after knowledge that such veterinarian is engaged in the violation of the provisions of this chapter; or [2007, c. 402, Pt. R, §8 (AMD).]

[2011, c. 594, §1 (AMD) .]

13. **Lack of sanitation.** Failure to maintain veterinary premises and equipment in a clean and sanitary condition as defined by the board in accordance with the sanitation provisions included in Title 7, section 3936.

[2007, c. 402, Pt. R, §8 (AMD) .]

14. **Violation.**

[2007, c. 402, Pt. R, §8 (RP) .]

SECTION HISTORY
1975, c. 477, §4 (NEW). 1977, c. 78, §187 (AMD). 1977, c. 694, §641 (AMD). 1979, c. 291, §§7-9 (AMD). 1993, c. 404, §A9 (AMD). 1997, c. 246, §§21-23 (AMD). 1999, c. 547, §B70 (AMD). 1999, c. 547, §B80 (AFF). 2003, c. 251, §§5-7 (AMD). 2005, c. 347, §C2 (AMD). 2007, c. 402, Pt. R, §8 (AMD). 2011, c. 594, §1 (AMD).

§4865. VETERINARY TECHNICIANS

A qualified person desiring registration as a veterinary technician, as defined in section 4853, subsection 11, shall submit a completed application to the board, together with such information as the board requires and the required examination and license fee pursuant to section 4863-A. [2005, c. 347, Pt. C, §3 (AMD).]

SECTION HISTORY
1975, c. 477, §4 (NEW). 1993, c. 404, §A10 (AMD). 2005, c. 347, §C3 (AMD).

§4865-A. REVOCATION, SUSPENSION OR DISCIPLINE

(REPEALED)

SECTION HISTORY
1975, c. 477, §4 (NEW). 1975, c. 740, §132 (AMD). 1977, c. 694, §642 (AMD). 1979, c. 291, §§10,11 (AMD). 1993, c. 404, §§A11,12 (AMD). 1997, c. 246, §24 (AMD). 1999, c. 547, §B71 (AMD). 1999, c. 547, §B80 (AFF). 2003, c. 251, §§8,9 (AMD). 2005, c. 347, §C4 (AMD). 2007, c. 402, Pt. R, §9 (RP).

§4866. DUTIES OF VETERINARY TECHNICIANS AND ANIMAL HEALTH ASSISTANTS

An animal health assistant may, under the direct supervision of a licensed veterinarian or a registered veterinary technician, perform duties of an animal health care nature. The duties do not include diagnosing, making prognoses, performing surgery, interpreting laboratory tests or prescribing or initiating treatment. [1997, c. 246, §26 (AMD).]

A veterinary technician registered in the State may perform, under the supervision and direction of a licensed veterinarian, such duties as drug administration, nursing care, x-ray film exposure and processing, bandage changes, dental prophylaxis, restraint, blood and fecal collections, diagnostic laboratory procedures and other duties the supervising veterinarian or the board may prescribe by rule, consistent with this chapter, except no one but a veterinarian may diagnose, make prognoses, prescribe or initiate treatment or surgery or perform surgery. [1993, c. 404, Pt. A, §13 (AMD).]

SECTION HISTORY
1975, c. 477, §4 (NEW). 1993, c. 404, §A13 (AMD). 1997, c. 246, §§25,26 (AMD).

§4867. HEARING

(REPEALED)

SECTION HISTORY
1975, c. 477, §4 (NEW). 1977, c. 694, §643 (RP).

§4868. APPEAL

(REPEALED)

SECTION HISTORY
1975, c. 477, §4 (NEW). 1977, c. 694, §644 (RP).

§4869. REINSTATEMENT

A veterinarian whose license is revoked or suspended or a veterinary technician whose registration is revoked or suspended may, at the discretion of the board, be relicensed, reregistered or reinstated at any time without an examination by majority vote of the board on written application made to the board showing cause justifying the relicensing, reregistration or reinstatement. [1993, c. 404, Pt. A, §13 (AMD).]

SECTION HISTORY
1975, c. 477, §4 (NEW). 1993, c. 404, §A13 (AMD).

§4870. ENFORCEMENT

Any person who practices veterinary medicine without a currently valid license, temporary permit or permit for the performance of relief veterinary service is subject to the provisions of Title 10, section 8003-C. [2007, c. 402, Pt. R, §10 (AMD).]

SECTION HISTORY
1975, c. 477, §4 (NEW). 1983, c. 48, §7 (AMD). 1993, c. 404, §A14 (AMD). 2007, c. 402, Pt. R, §10 (AMD).

§4871. DUTIES OF THE BOARD

(REPEALED)

SECTION HISTORY
1975, c. 477, §4 (NEW). 1997, c. 246, §27 (AMD). 2007, c. 402, Pt. R, §11 (RP).

§4872. DISPOSAL OF ABANDONED ANIMALS

Any veterinarian may dispose of any animal the veterinarian has reason to believe has been abandoned in the veterinarian's establishment if the veterinarian gives notice of the veterinarian's intention to do so to the owner at the owner's last known address by registered or certified mail, return receipt requested and allows a period of 5 days to elapse after the receipt is returned before disposing of such animal; but if the owner can not be located at that address, the veterinarian shall give the notice by publication in a newspaper having a circulation in the town in which the owner was last known to reside, and shall allow a period of 10 days to elapse after the publication before disposing of the animal. The animal is considered abandoned if the owner was not located by registered mail or notice by publications and did not reply in person or by mail within the time periods outlined stating the owner's intent to claim the animal. [1997, c. 246, §28 (AMD).]

SECTION HISTORY
1975, c. 477, §4 (NEW). 1979, c. 291, §12 (AMD). 1997, c. 246, §28 (AMD).

§4873. SEVERABILITY

(REPEALED)

SECTION HISTORY
1975, c. 477, §4 (NEW). 2007, c. 402, Pt. R, §12 (RP).

§4874. IMMUNITY FROM CIVIL LIABILITY

Notwithstanding any inconsistent provisions of any public or private and special law, any person who voluntarily, without the expectation of monetary or other compensation renders first aid, emergency treatment or rescue assistance to an animal who is ill, injured or in need of rescue assistance, is not liable for damages for injuries alleged to have been sustained by the animal or for damages for the death of the animal alleged to have occurred by reason of an act or omission in the rendering of the first aid, emergency treatment or rescue assistance, unless it is established that the injuries or the death were caused willfully, wantonly or recklessly or by gross negligence on the part of the person. [2007, c. 402, Pt. R, §13 (AMD).]

SECTION HISTORY
1979, c. 291, §13 (NEW). 2007, c. 402, Pt. R, §13 (AMD).

§4875. NOTICE OF SERVICES

A person engaged in the practice of veterinary medicine who maintains a facility where veterinary medicine is practiced and animals are kept overnight shall provide a written notice regarding the after-hours staffing policies for the facility to any person who is responsible for an animal and who is releasing that animal to the facility. The notice must include the staffing levels and approximate times that a staff member is present during the hours that the facility is not regularly open to the public. The person responsible for releasing the animal to the facility shall sign and date the notice to acknowledge receipt of the notice. A copy of the signed notice must be kept in the animal's patient file. [2001, c. 62, §1 (NEW).]

A person engaged in the practice of veterinary medicine who fails to comply with this section is subject to discipline by the board. [2001, c. 62, §1 (NEW).]

SECTION HISTORY
2001, c. 62, §1 (NEW).

§4876. PRESCRIPTIONS OF OTHER VETERINARIANS

A licensed veterinarian may sell and dispense the written prescription of another licensed veterinarian with respect to any prescription or administration of a drug, medicine or nutritional substance on, for or to any animal in accordance with this chapter. [2011, c. 30, §1 (NEW).]

SECTION HISTORY
2011, c. 30, §1 (NEW).

Chapter 73: GEOLOGISTS AND SOIL SCIENTISTS

Subchapter 1: GENERAL PROVISIONS

§4901. TITLE

This chapter may be cited as the "Geologists and Soil Scientists Certification Act." [1973, c. 558, §1 (NEW).]

SECTION HISTORY
1973, c. 558, §1 (NEW).

§4902. DEFINITIONS

As used in this chapter, unless a different meaning clearly appears from the context, the following words shall have the following meanings. [1973, c. 558, §1 (NEW).]

1. **Board.** "Board" shall mean the State Board of Certification for Geologists and Soil Scientists.

[1973, c. 558, §1 (NEW) .]

1-A. **Approved.** "Approved" means approved by the board.

[2007, c. 402, Pt. S, §1 (NEW) .]

2. **Certified geologist.** "Certified geologist" means a person entitled under this chapter to take and use the title.

[1973, c. 558, §1 (NEW) .]

3. **Certified soil scientist.** "Certified soil scientist" means a person entitled under this chapter to take and use the title.

[1973, c. 558, §1 (NEW) .]

4. **Geologist.** "Geologist" means a person engaged in the practice of geology.

[1973, c. 558, §1 (NEW) .]

5. **Geology.** "Geology" means that science which treats of the earth as a whole; the investigation of its composition, its size, shape and relationships between consolidated and unconsolidated rock units in the regolith and bedrock; and the applied aspects of utilizing knowledge of the earth and its constitutents; including its consolidated and unconsolidated rock units, its minerals, liquids, gases and other materials for the benefit of mankind.

[1973, c. 558, §1 (NEW) .]

6. **Pedology.** "Pedology" shall mean that aspect of soil science which involves, among others, the nature, properties, formation, classification, functioning behavior and response to use and management of soils; it shall include the mapping and identification of soils, and the interpretation of soil properties. Pedology centers on soils as the biochemically weathered part of the earth's crust, the collection of natural bodies on the earth's surface, supporting plants, with a lower limit at the deeper of either the unconsolidated mineral or organic material lying within the zone of rooting of the native perennial plants; or where horizons

impervious to roots have developed the upper few feet of the earth's crust having properties differing from the underlying rock material as a result of interactions between climate, living organisms, parent material and relief.

[1973, c. 558, §1 (NEW) .]

7. **Practice of geology.** "Practice of geology" means the performance of geological work or service for the public, including, but not limited to, consultation, investigation, surveys, evaluation, planning, mapping or inspection of geological work, wherein the performance is related to the public welfare or the safeguarding of life, health, property and the environment.

[1983, c. 816, Pt. A, §36 (AMD) .]

8. **Practice of soil science.** "Practice of soil science" shall be held to mean any professional service which requires the application of pedological principles and data. Such professional service includes identification and mapping of soils according to the standards of the National Cooperative Soil Survey, consultation or evaluation.

[1973, c. 558, §1 (NEW) .]

9. **Qualified soil scientist.** "Qualified soil scientist" shall mean a person who, by reason of his knowledge of pedology, the biological and physical sciences, acquired by professional education and practical experience, is qualified to engage in the practice of soil science as defined.

[1973, c. 558, §1 (NEW) .]

10. **Qualified geologist.** "Qualified geologist" means a person who possesses the qualifications specified for certification, except that he is not certified.

[1973, c. 558, §1 (NEW) .]

11. **Responsible charge of work.** "Responsible charge of work" means the independent control and direction by the use of initiative, skill and independent judgment of work or the supervision of such work.

[1973, c. 558, §1 (NEW) .]

12. **Subordinate.** "Subordinate" means any person who assists a certified geologist or soil scientist without assuming the responsible charge of work.

[1973, c. 558, §1 (NEW) .]

SECTION HISTORY
1973, c. 558, §1 (NEW). 1983, c. 816, §A36 (AMD). 2007, c. 402, Pt. S, §1 (AMD).

§4903. EFFECT OF LAW

1. **Licensure required.** No person may practice or offer to practice geology or soil science in the State without a current license issued under this chapter, unless specifically exempted from the license requirement by this chapter.

[2007, c. 402, Pt. S, §2 (AMD) .]

2. **Effect.** This chapter shall not be construed to affect or prevent the practice of any other legally recognized profession.

[1981, c. 501, §70 (NEW) .]

SECTION HISTORY
1973, c. 558, §1 (NEW). 1981, c. 501, §70 (RPR). 2007, c. 402, Pt. S, §2 (AMD).

§4904. CORPORATIONS, PARTNERSHIPS, ASSOCIATIONS AND GOVERNMENT AGENCIES

This chapter does not prohibit one or more geologists or soil scientists from practicing through the medium of a sole proprietorship, partnership, corporation or government agency. In such partnership or corporation whose primary activity consists of geological services, or in a government agency in which geological work is done, at least one partner, officer or employee shall be a certified geologist. In such partnership or corporation whose primary activity consists of soil science services, or in a government agency in which soil science work is done, at least one partner, officer or employee shall be a certified soil scientist. In the case of an agency of State Government, the Bureau of Human Resources shall classify officers and employees under the Civil Service Law in a manner that ensures that at least one certified geologist or soil scientist shall work for each agency in which, as the case may be, geological or soil science work is done and that any officer or employee who is engaged in the practice of geology or soil science and who is uncertified works as a subordinate to a certified geologist or soil scientist, as the case may be, and does not have responsible charge of work or evaluation. [1985, c. 785, Pt. B, §142 (AMD).]

SECTION HISTORY
1973, c. 558, §1 (NEW). 1979, c. 89, §1 (RPR). 1985, c. 785, §B142 (AMD).

§4905. APPLICATION

(REPEALED)

SECTION HISTORY
1973, c. 558, §1 (NEW). 1981, c. 501, §71 (RP).

§4906. EXEMPTIONS

The following persons are exempt from the license requirement imposed by this chapter: [2007, c. 402, Pt. S, §3 (AMD).]

1. **Nonresident practicing less than 30 days.** A person not a resident of and having no established place of business in this State, practicing or offering to practice the profession of geologist or soil scientist when that practice does not exceed in the aggregate more than 30 days in any calendar year, provided that the person is legally qualified by registration to practice the profession in his own state or country in which the requirements and qualifications for obtaining a certificate or registration are equivalent to those specified in this chapter;

[1983, c. 413, §172 (AMD) .]

2. **Nonresident becoming resident or persons practicing more than 30 days.** A person not a resident of and having no established place of business in this State, or who has recently become a resident thereof, practicing or offering to practice for more than 30 days in any calendar year the profession of geologist or soil scientist, if he has filed with the commission an application for a certification and has paid the fee required by this chapter. The exemption shall continue only for such time as the board requires for the consideration of the

application for registration, provided that such a person is legally qualified to practice that profession in his own state or country in which the requirements and qualifications for obtaining a certificate of registration are equivalent to those specified in this chapter;

[1983, c. 413, §172 (AMD) .]

3. **Certain employees.** An employee, associate or subordinate of a person holding a certificate of registration under this chapter, or an employee of a person exempted from registration by subsections 1 and 2; provided that the work of all such employees, associates or subordinates does not include responsible charge of work or evaluation; and

[1981, c. 501, §73 (AMD) .]

4. **United States Government employees.** Officers and employees of the Government of the United States while engaged within this State in the practice of the profession of geologist or soil scientist for the government.

[1981, c. 501, §74 (AMD) .]

5. **Subsurface sewage disposal.**

[1981, c. 501, §75 (RP) .]

SECTION HISTORY
1973, c. 558, §1 (NEW). 1975, c. 760, §§6,7 (AMD). 1979, c. 89, §2 (AMD). 1981, c. 501, §§72-75 (AMD). 1983, c. 413, §172 (AMD). 2007, c. 402, Pt. S, §3 (AMD).

§4906-A. SUBSURFACE SEWAGE DISPOSAL

Persons who have been licensed by the Department of Professional and Financial Regulation pursuant to Title 22, section 42, subsection 3-A to evaluate soil for subsurface sewage disposal are exempt from the license requirement if their soil evaluation work relates solely to subsurface sewage disposal systems. [2007, c. 402, Pt. S, §4 (AMD).]

SECTION HISTORY
1981, c. 501, §76 (NEW). 1985, c. 748, §42 (AMD). 2007, c. 402, Pt. S, §4 (AMD).

§4907. BOARD

The State Board of Certification for Geologists and Soil Scientists as established by Title 5, section 12004-A, subsection 19, shall administer this chapter. The board consists of 7 members, 5 of whom are appointed by the Governor from the following categories: One academic geologist; one independent consultant or salaried geologist; one independent consultant or salaried soil scientist; one other soil scientist; and a public member as defined in Title 5, section 12004-A. The 4 geologist members appointed by the Governor must be licensed under this chapter. The 6th and 7th members are the State Soil Scientist with the Maine Soil and Water Conservation Commission, ex officio, and the State Geologist or the State Geologist's designee, who must be a geologist employed in State Government, ex officio. No person, except the public member, is eligible for appointment to the board unless certified under this chapter. [2007, c. 402, Pt. S, §5 (AMD).]

1. **Qualifications.** Each member of the board must have been a resident of this State for at least 5 years immediately preceding the appointment.

[2007, c. 402, Pt. S, §5 (AMD) .]

2. **Term.** Appointments are for 5-year terms. Appointments of members must comply with Title 10, section 8009. A board member may be removed for cause by the Governor.

[2007, c. 402, Pt. S, §5 (AMD) .]

3. **Compensation.**

[1995, c. 397, §65 (RP) .]

4. **Meetings; chair.** 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.

[2013, c. 246, Pt. B, §14 (AMD) .]

5. **Hearings.**

[2007, c. 402, Pt. S, §5 (RP) .]

6. **Contracts.**

[1995, c. 397, §66 (RP) .]

SECTION HISTORY
1973, c. 558, §1 (NEW). 1975, c. 760, §§8-10 (AMD). 1975, c. 771, §§370,371 (AMD). 1977, c. 78, §§188,189 (AMD). 1979, c. 300, §§1,2 (AMD). 1983, c. 413, §§173-177 (AMD). 1983, c. 553, §46 (AMD). 1983, c. 812, §§243,244 (AMD). 1987, c. 395, §A175 (AMD). 1989, c. 503, §B145 (AMD). 1993, c. 600, §A252 (AMD). 1995, c. 397, §§65,66 (AMD). 2007, c. 402, Pt. S, §5 (AMD). 2013, c. 246, Pt. B, §14 (AMD).

§4908. POWERS AND DUTIES

The board may adopt, amend or repeal rules and regulations, pursuant to Title 5, chapter 375, subchapter II, to carry out this chapter, including, but not limited to, rules and regulations relating to professional conduct in accordance with the policy of this chapter. [1979, c. 300, §3 (RPR).]

1. **Register.**

[2007, c. 402, Pt. S, §6 (RP) .]

2. **Reports.**

[2007, c. 402, Pt. S, §7 (RP) .]

3. **Employees.**

[1995, c. 397, §69 (RP) .]

4. **Liaison.** The board shall establish relations with bodies which regulate the practice of geology and the practice of soil science, or closely related disciplines, or which certify geologists or soil scientists in other states, and may establish relations with such bodies in other countries for the purposes of achieving uniformly high professional standards and mutual recognition of certification.

[1979, c. 663, §211 (AMD) .]

SECTION HISTORY
1973, c. 558, §1 (NEW). 1975, c. 760, §§10-A,11 (AMD). 1977, c. 694, §645 (AMD). 1979, c. 300, §3 (RPR). 1979, c. 663, §211 (AMD). 1983, c. 553, §46 (AMD). 1985, c. 785, §B143 (AMD). 1987, c. 395, §§A176,A177 (AMD). 1995, c. 397, §§67-69 (AMD). 1995, c. 502, §H48 (AMD). 2007, c. 402, Pt. S, §§6, 7 (AMD).

§4909. QUALIFICATIONS

1.

[2007, c. 402, Pt. S, §8 (RP) .]

1-A. **Application.** An applicant for licensure as a geologist or soil scientist shall file an application and pay the application fee as set under section 4912. An applicant for licensure as a geologist or soil scientist must be trustworthy and competent.

[2007, c. 402, Pt. S, §8 (NEW) .]

2. **Geologist examination requirements.** As a geologist, to qualify to sit for the examination for licensure, an applicant must:

A. Be a graduate of an accredited college or university with a major in geological sciences, or have completed 30 credits in geological sciences at an accredited college or university, or have at least 7 years of professional geological work that shall include either a minimum of 3 years of professional geological work under the supervision of a qualified geologist or a minimum of 5 years of responsible charge of geological work; [2007, c. 402, Pt. S, §8 (AMD).]

B. Have acquired 7 years of experience in responsible charge of geological work, toward which an undergraduate degree with 30 credit hours or more in geological science courses counts as 2 years of training and each year of graduate study in the geological sciences counts as 1/2 year of training, up to a maximum of 2 years of credit; and [2007, c. 402, Pt. S, §8 (AMD).]

C. Receive credit toward the experience requirement subject to the evaluation of the board. Applicants with less than 30 credit hours in geological science courses may be given proportional work-experience credits for such academic credit hours as they may have acquired. [1975, c. 760, §12 (NEW).]

[2007, c. 402, Pt. S, §8 (AMD) .]

2-A. **Soil scientist examination requirements.** As a soil scientist, to qualify to sit for the examination for licensure, an applicant must:

A. Be a graduate of an approved 4-year college curriculum leading to a Baccalaureate Degree, in which the applicant has successfully completed a minimum of 15 credit hours of soil or soil-related courses of a pedological nature and have a specific record of an additional 3 years or more of experience in soil science of a grade and character that indicates to the board that the applicant may be competent

to practice as a soil scientist and be otherwise qualified. Teaching pedological courses in a college or university offering an approved 4-year soil science or agronomic curriculum must be considered as experience in soils investigations. [1999, c. 386, Pt. P, §1 (AMD).]

Applicants may sit for the General practice examination upon graduation from an approved 4-year college and may sit for the professional practice examination upon completion of the experience requirement as stated in this subsection.

"Additional 3 years of experience" does not imply a sequence of obtaining a degree and then experience. Experience time may not be granted for time while enrolled in courses, but summer employment must be counted even though a degree may not have been obtained.

Actual field experience in an acceptable apprenticeship program counts as experience time.

Each degree beyond the bachelor's degree counts as one year of experience.

Soil-related courses may amount to only 20% of the required 15 credits for a maximum of 3 credits.

[2007, c. 402, Pt. S, §8 (AMD) .]

3. **Examination.** An applicant shall sit for and pass an examination before the board or its authorized representatives. Such examination will be held at certain specified times and of such scope as prescribed by the board.

[2007, c. 402, Pt. S, §8 (AMD) .]

Generally, the examinations must test the applicant's knowledge basic to geology or soil science and the applicant's ability to apply that knowledge and to assume responsible charge in the professional practice of geology or soil science. [2007, c. 402, Pt. S, §8 (AMD).]

An applicant for licensure must meet all the requirements of this chapter and, in addition, must have 3 years' experience in geology or soil science as defined by this chapter and in the rules and regulations of the board to be provided. [2007, c. 402, Pt. S, §8 (AMD).]

An applicant failing in an examination may be examined again upon filing a new application and the payment of the prescribed fees. [1983, c. 413, §179 (AMD).]

The board, upon application therefor, and upon payment of the application and license fees, may issue a license as a geologist or soil scientist without written examination to any person holding a license as a geologist or soil scientist issued to that geologist or soil scientist by any state or country having equivalent requirements, when the applicant's qualifications meet the other requirements of this chapter and the rules established by the board. [2007, c. 402, Pt. S, §8 (AMD).]

In determining the qualifications of an applicant for licensure, a majority vote of the board is required. [2007, c. 402, Pt. S, §8 (AMD).]

Any applicant who has passed the examination or has otherwise qualified as a geologist or soil scientist upon payment of the fee as set under section 4912 must have a license as a geologist or soil scientist as appropriate. [2007, c. 402, Pt. S, §8 (AMD).]

SECTION HISTORY
1973, c. 558, §1 (NEW). 1973, c. 788, §162 (AMD). 1975, c. 760, §§12,13 (AMD). 1977, c. 694, §646 (AMD). 1981, c. 501, §77 (AMD). 1983, c. 413, §§178-181 (AMD). 1999, c. 386, §P1 (AMD). 2007, c. 402, Pt. S, §8 (AMD).

§4910. EXPIRATION

(REPEALED)

SECTION HISTORY

1973, c. 558, §1 (NEW). 1975, c. 760, §14 (AMD). 1979, c. 300, §4 (RP).

§4911. EXPIRATION AND RENEWAL

Licenses expire on December 31st or at such other times as the Commissioner of Professional and Financial Regulation may designate and become invalid on that date unless renewed. [2007, c. 402, Pt. S, §9 (AMD).]

A license may be renewed up to 90 days after the date of expiration upon payment of a late fee in addition to the renewal fee as set under section 4912. Any person who submits an application for renewal more than 90 days after the license renewal date 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 the renewal application is received, together with the late fee and renewal fee, within 2 years from the date of the expiration. [2007, c. 402, Pt. S, §9 (AMD).]

SECTION HISTORY
1973, c. 558, §1 (NEW). 1979, c. 300, §5 (RPR). 1983, c. 413, §182 (AMD). 1987, c. 395, §A178 (AMD). 1993, c. 404, §A15 (AMD). 1995, c. 502, §H48 (AMD). 1999, c. 685, §15 (AMD). 2007, c. 402, Pt. S, §9 (AMD).

§4912. FEES

The Director of the Office of Professional and Occupational Regulation within the Department of Professional and Financial Regulation may establish by rule fees for purposes authorized under this subchapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for any one purpose may not exceed $250 annually. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [2007, c. 402, Pt. S, §10 (AMD); 2011, c. 286, Pt. B, §5 (REV).]

SECTION HISTORY
1973, c. 558, §1 (NEW). 1975, c. 760, §§15,16 (AMD). 1979, c. 34, (AMD). 1983, c. 413, §183 (RPR). 1991, c. 509, §26 (AMD). 1993, c. 404, §A16 (AMD). 1995, c. 502, §H34 (AMD). 1997, c. 141, §1 (AMD). 1999, c. 685, §16 (RPR). 2007, c. 402, Pt. S, §10 (AMD). 2011, c. 286, Pt. B, §5 (REV).

§4913. DENIAL OR REFUSAL TO RENEW LICENSE; DISCIPLINARY ACTION

The board may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A for any of the reasons enumerated in Title 10, section 8003, subsection 5-A, paragraph A. [2007, c. 402, Pt. S, §11 (NEW).]

SECTION HISTORY
1973, c. 558, §1 (NEW). 1975, c. 760, §17 (RPR). 1977, c. 694, §§647,648 (AMD). 1983, c. 413, §184 (AMD). 1999, c. 547, §B72 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 402, Pt. S, §11 (RPR).

§4914. REISSUANCE OF CERTIFICATE

The board, for reasons it may deem sufficient, may reissue, following a previous revocation or nonrenewal, a certificate as a certified geologist or soil scientist to any person whose certificate has been revoked, provided 5 members vote in favor of the reissuance. [1975, c. 760, §18 (RPR).]

SECTION HISTORY

1973, c. 558, §1 (NEW). 1975, c. 760, §18 (RPR).

§4915. ENFORCEMENT

(REPEALED)

SECTION HISTORY
1973, c. 558, §1 (NEW). 1975, c. 760, §19 (AMD). 2007, c. 402, Pt. S, §12 (RP).

§4916. USE OF NAME

(REPEALED)

SECTION HISTORY
1973, c. 558, §1 (NEW). 1981, c. 501, §78 (RP).

§4917. VIOLATION

(REPEALED)

SECTION HISTORY
1973, c. 558, §1 (NEW). 1981, c. 501, §79 (RP).

§4918. PLANS PREPARED

All geologic plans, specifications, reports or documents which are prepared by a certified geologist or by a subordinate under his direction shall be signed by such geologist, which shall indicate his responsibility for them. [1975, c. 760, §20 (RPR).]

All pedological maps, reports or documents which are prepared by a certified soil scientist or by a subordinate under his direction shall be signed by such certified soil scientist, which shall indicate his responsibility for them. [1975, c. 760, §20 (RPR).]

SECTION HISTORY
1973, c. 558, §1 (NEW). 1975, c. 623, §51D (AMD). 1975, c. 760, §20 (RPR).

§4919. UNLICENSED PRACTICE

A person who violates section 4903 is subject to the provisions of Title 10, section 8003-C. [2007, c. 402, Pt. S, §13 (AMD).]

SECTION HISTORY
1973, c. 558, §1 (NEW). 1983, c. 413, §185 (RPR). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2001, c. 421, §B99 (AMD). 2001, c. 421, §C1 (AFF). 2007, c. 402, Pt. S, §13 (AMD).

§4920. RECEIPTS AND DISBURSEMENTS

(REPEALED)

SECTION HISTORY
1985, c. 389, §22 (NEW). 2007, c. 402, Pt. S, §14 (RP).

Chapter 75: FORESTER LICENSING

§5001. PURPOSE

(REPEALED)

SECTION HISTORY
1975, c. 490, (NEW). 2001, c. 261, §3 (RP).

§5002. USE OF TITLE

(REPEALED)

SECTION HISTORY
1975, c. 490, (NEW). 1975, c. 623, §§51D-1 (AMD). 1979, c. 118, §1 (AMD). 1987, c. 395, §A180 (AMD). 2001, c. 261, §3 (RP).

§5003. DEFINITIONS

(REPEALED)

SECTION HISTORY
1975, c. 490, (NEW). 1979, c. 118, §2 (AMD). 1987, c. 395, §A181 (AMD). 1989, c. 700, §A149 (AMD). 2001, c. 261, §3 (RP).

§5004. STATE BOARD OF LICENSURE FOR PROFESSIONAL FORESTERS

(REPEALED)

SECTION HISTORY
1975, c. 490, (NEW). 1975, c. 771, §372 (AMD). 1979, c. 285, §1 (AMD). 1983, c. 413, §186 (AMD). 1983, c. 553, §46 (AMD). 1983, c. 812, §245 (AMD). 1987, c. 395, §A182 (AMD). 1989, c. 503, §B146 (AMD). 1991, c. 283, §1 (AMD). 1993, c. 600, §A253 (AMD). 2001, c. 261, §3 (RP).

§5005. QUALIFICATIONS OF BOARD MEMBERS

(REPEALED)

SECTION HISTORY
1975, c. 490, (NEW). 1991, c. 283, §2 (RP).

§5006. COMPENSATION AND EXPENSES OF BOARD MEMBERS

(REPEALED)

SECTION HISTORY
1975, c. 490, (NEW). 1983, c. 812, §246 (RPR). 1995, c. 397, §70 (RP).

§5007. REMOVAL OF BOARD MEMBERS; VACANCIES

(REPEALED)

SECTION HISTORY
1975, c. 490, (NEW). 1975, c. 771, §373 (AMD). 1983, c. 413, §187 (AMD). 1993, c. 600, §A254 (AMD). 2001, c. 261, §3 (RP).

§5008. MEETINGS OF THE BOARD

(REPEALED)

SECTION HISTORY
1975, c. 490, (NEW). 1983, c. 413, §188 (RPR). 2001, c. 261, §3 (RP).

§5009. POWERS

(REPEALED)

SECTION HISTORY
1975, c. 490, (NEW). 1977, c. 694, §649 (AMD). 1979, c. 118, §3 (AMD). 1983, c. 413, §189 (RPR). 1987, c. 395, §A183 (AMD). 1995, c. 397, §71 (AMD). 2001, c. 261, §3 (RP).

§5010. RECEIPTS AND DISBURSEMENTS

(REPEALED)

SECTION HISTORY
1975, c. 490, (NEW). 1985, c. 389, §23 (RPR). 1995, c. 397, §72 (RP).

§5011. RECORDS

(REPEALED)

SECTION HISTORY
1975, c. 490, (NEW). 1977, c. 604, §34 (AMD). 1983, c. 413, §190 (RPR). 2001, c. 261, §3 (RP).

§5011-A. REPORTS; LIAISON; LIMITATIONS

(REPEALED)

SECTION HISTORY
1977, c. 604, §35 (NEW). 1979, c. 285, §2 (AMD). 1983, c. 553, §46 (AMD). 1985, c. 389, §24 (AMD). 2001, c. 261, §3 (RP).

§5011-B. BUDGET

(REPEALED)

SECTION HISTORY
1977, c. 604, §35 (NEW). 1979, c. 285, §3 (AMD). 1989, c. 450, §32 (AMD). 1995, c. 397, §73 (RP).

§5011-C. EMPLOYEES

(REPEALED)

SECTION HISTORY
1979, c. 285, §4 (NEW). 1983, c. 553, §46 (AMD). 1985, c. 785, §B144 (AMD). 1989, c. 450, §33 (AMD). 1995, c. 397, §74 (RP).

§5012. GENERAL REQUIREMENTS FOR LICENSURE

(REPEALED)

SECTION HISTORY
1975, c. 490, (NEW). 1975, c. 770, §192 (AMD). 1979, c. 118, §4 (AMD). 1981, c. 470, §A154 (RPR). 1987, c. 395, §A184 (AMD). 1989, c. 142, (RPR). 1991, c. 283, §3 (AMD). 2001, c. 261, §3 (RP).

§5013. APPLICATIONS; FEES

(REPEALED)

SECTION HISTORY
1975, c. 490, (NEW). 1975, c. 770, §§193,194 (AMD). 1983, c. 413, §191 (AMD). 1987, c. 395, §A185 (AMD). 1991, c. 283, §4 (AMD). 1995, c. 502, §H35 (AMD). 2001, c. 261, §3 (RP).

§5014. ISSUANCE OF LICENSE; ENDORSEMENT OF DOCUMENTS

(REPEALED)

SECTION HISTORY
1975, c. 490, (NEW). 1983, c. 413, §192 (AMD). 1987, c. 395, §A186 (AMD). 1991, c. 428, §1 (AMD). 2001, c. 261, §3 (RP).

§5015. EXPIRATION AND RENEWAL OF LICENSE

(REPEALED)

SECTION HISTORY
1975, c. 490, (NEW). 1979, c. 285, §§5,6 (AMD). 1983, c. 413, §193 (AMD). 1987, c. 395, §A187 (AMD). 1989, c. 450, §34 (AMD). 1991, c. 283, §5 (AMD). 1995, c. 502, §H36 (AMD). 2001, c. 261, §3 (RP).

§5016. FIRMS; PARTNERSHIPS AND CORPORATIONS

(REPEALED)

SECTION HISTORY
1975, c. 490, (NEW). 1987, c. 395, §A188 (AMD). 2001, c. 261, §3 (RP).

§5017. RECIPROCITY

(REPEALED)

SECTION HISTORY
1975, c. 490, (NEW). 1987, c. 395, §A189 (AMD). 1993, c. 659, §A7 (RPR). 2001, c. 261, §3 (RP).

§5018. REVOCATION; SUSPENSION; REFUSAL TO RENEW AND REISSUANCE OF LICENSES

(REPEALED)

SECTION HISTORY

1975, c. 490, (NEW). 1975, c. 623, §§51D,2 (AMD). 1975, c. 770, §§195,196 (AMD). 1977, c. 694, §§650-654 (AMD). 1983, c. 413, §§194,195 (AMD). 1987, c. 395, §A190 (AMD). 1995, c. 397, §75 (AMD). 1999, c. 547, §B73 (AMD). 1999, c. 547, §B80 (AFF). 1999, c. 687, §§F5-7 (AMD). 2001, c. 261, §3 (RP).

§5019. VIOLATIONS AND PENALTIES

(REPEALED)

SECTION HISTORY
1975, c. 490, (NEW). 1983, c. 413, §196 (AMD). 1987, c. 395, §A191 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2001, c. 261, §3 (RP).

Chapter 76: FORESTER LICENSING

Subchapter 1: GENERAL PROVISIONS HEADING: PL 2001, C. 261, §4 (NEW)

§5501. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2001, c. 261, §4 (NEW).]

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

[2001, c. 261, §4 (NEW) .]

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

[2001, c. 261, §4 (NEW) .]

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

[2001, c. 261, §4 (NEW) .]

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.

[2001, c. 261, §4 (NEW) .]

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

[2001, c. 261, §4 (NEW) .]

6. **Person.** "Person" means an individual.

[2001, c. 261, §4 (NEW) .]

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

[2001, c. 261, §4 (NEW) .]

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

[2001, c. 261, §4 (NEW) .]

SECTION HISTORY
2001, c. 261, §4 (NEW).

§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. [2001, c. 261, §4 (NEW).]

SECTION HISTORY
2001, c. 261, §4 (NEW).

§5503. EXEMPTIONS TO LICENSING

A license is not required for forestry activities conducted by: [2001, c. 261, §4 (NEW).]

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;

[2001, c. 261, §4 (NEW) .]

2. **Federal Government employee.** Federal Government employees conducting forestry practices within the scope of their employment;

[2001, c. 261, §4 (NEW) .]

3. **Person registered and practicing forestry.** A person registered and practicing forestry under the supervision of a forester as set forth by section 5515, subsection 10, paragraph B; or

[2007, c. 402, Pt. T, §1 (AMD) .]

4. **Owner.** An owner managing or otherwise conducting forestry practices on that owner's land.

[2001, c. 261, §4 (NEW) .]

SECTION HISTORY
2001, c. 261, §4 (NEW). 2007, c. 402, Pt. T, §1 (AMD).

§5504. PENALTIES; INJUNCTION

1. **Unlicensed practice.** A person who violates section 5502 is subject to the provisions of Title 10, section 8003-C.

[2001, c. 261, §4 (NEW) .]

2. **Endorsement.** It is a Class E crime for a forester or intern forester to endorse any plan, map or report other than a forest management and harvest plan as defined in Title 36, section 573, subsection 3-A, unless that forester or intern forester prepared or was in charge of the preparation of the map, plan or report.

[2001, c. 261, §4 (NEW) .]

SECTION HISTORY
2001, c. 261, §4 (NEW).

Subchapter 2: BOARD OF LICENSURE OF FORESTERS HEADING: PL 2001, C. 261, §4 (NEW)

§5505. BOARD; ORGANIZATION

1. **Establishment; purpose.** The Board of Licensure of Foresters, as established within the department pursuant to Title 5, section 12004-A, subsection 17, administers the provisions of this chapter to protect the public by improving the standards relative to the practice of forestry, to protect the public from unqualified practitioners and to help ensure the proper management of the forest resources of the State.

[2001, c. 261, §4 (NEW) .]

2. **Members.** The board consists of 6 members appointed by the Governor. Each member must be a resident of this State. The board consists of:

A. One public member as defined in Title 5, section 12004-A; and [2007, c. 402, Pt. T, §2 (AMD).]

B. Five foresters who hold valid licenses. [2001, c. 261, §4 (NEW).]

[2007, c. 402, Pt. T, §2 (AMD) .]

3. **Terms; removal.** Terms of the members of the board are for 3 years. Appointments of members must comply with Title 10, section 8009. Members may be removed by the Governor for cause.

[2007, c. 402, Pt. T, §2 (AMD) .]

4. **Meetings; chair.** 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.

[2013, c. 246, Pt. B, §15 (AMD) .]

5. **Election of officers.**

[2007, c. 402, Pt. T, §2 (RP) .]

SECTION HISTORY
2001, c. 261, §4 (NEW). 2007, c. 402, Pt. T, §2 (AMD). 2013, c. 246, Pt. B, §15 (AMD).

§5506. RULES

The board may establish guidelines and rules by which this chapter is administered. Except where otherwise indicated, rules adopted pursuant to this chapter are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. [2001, c. 261, §4 (NEW).]

1. **Education.** The board may adopt rules to be applied in determining whether educational programs meet the license qualifications under this chapter.

[2001, c. 261, §4 (NEW) .]

2. **License qualifications.** The board may adopt rules relating to the qualifications of an applicant for a license authorized under this chapter that ensure that an applicant is sufficiently trustworthy and competent to practice forestry.

[2001, c. 261, §4 (NEW) .]

3. **Standards of practice.** The board may adopt rules consistent with the standards set forth in this chapter governing the practice of forestry in order to establish standards of practice that serve the public interest. The board may not adopt rules that govern forestry practices.

[2001, c. 261, §4 (NEW) .]

4. **Other.** The board may adopt and enforce other rules that are necessary for the performance of its duties under this chapter.

[2001, c. 261, §4 (NEW) .]

SECTION HISTORY
2001, c. 261, §4 (NEW).

§5507. FEES

The Director of the Office of Professional and Occupational Regulation, pursuant to Title 10, section 8003, subsection 2-A, paragraph D, may establish by rule fees for purposes authorized under this chapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for a purpose may not exceed $100 annually. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2011, c. 2, §35 (COR).]

SECTION HISTORY
2001, c. 261, §4 (NEW). RR 2011, c. 2, §35 (COR). 2011, c. 286, Pt. B, §5 (REV).

§5508. DUTIES AND POWERS

The board shall administer and enforce this chapter and evaluate the qualifications of applicants for licensure. [2007, c. 402, Pt. T, §3 (RPR).]

SECTION HISTORY
2001, c. 261, §4 (NEW). 2007, c. 402, Pt. T, §3 (RPR).

§5509. GROUNDS FOR DISCIPLINARY ACTION

(REPEALED)

SECTION HISTORY
2001, c. 261, §4 (NEW). 2007, c. 402, Pt. T, §4 (RP).

§5509-A. DENIAL OR REFUSAL TO RENEW LICENSE; DISCIPLINARY ACTION

In addition to the grounds enumerated in Title 10, section 8003, subsection 5-A, paragraph A, the board may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A for: [2007, c. 402, Pt. T, §5 (NEW).]

1. **Aiding or abetting.** Aiding or abetting a person in conduct that constitutes a violation of this chapter;

[2007, c. 402, Pt. T, §5 (NEW) .]

2. **Lack of trustworthiness.** A lack of trustworthiness and competence on the part of the applicant or licensee to conduct forestry practices in a manner that safeguards the interests of the public;

[2007, c. 402, Pt. T, §5 (NEW) .]

3. **Suspension or revocation of license.** Suspension or revocation of a professional or occupational license for disciplinary reasons or rejection of an application for reasons related to untrustworthiness within 3 years prior to the date of application; or

[2007, c. 402, Pt. T, §5 (NEW) .]

4. **Failure to meet professional qualifications; failure to submit complete application.** Failure to meet the professional qualifications for licensure as provided in this subchapter or failure to submit a complete application within 30 days after being notified of the materials needed to complete the application.

[2007, c. 402, Pt. T, §5 (NEW) .]

SECTION HISTORY
2007, c. 402, Pt. T, §5 (NEW).

Subchapter 3: LICENSING QUALIFICATIONS
HEADING: PL 2001, C. 261, §4 (NEW)

§5510. GENERAL QUALIFICATIONS

1. **Application.** The applicant shall submit an application together with the fee as set under section 5507.

[2007, c. 402, Pt. T, §6 (AMD) .]

2. **Criminal history information.**

[2007, c. 402, Pt. T, §6 (RP) .]

SECTION HISTORY
2001, c. 261, §4 (NEW). 2007, c. 402, Pt. T, §6 (AMD).

§5511. LICENSE LIMITED TO PERSONS

A license issued under this subchapter may only be issued to a person, and licensure must be determined based on individual and personal qualifications. A firm, company, partnership, limited liability company or corporation may not be licensed under this chapter. [2001, c. 261, §4 (NEW).]

SECTION HISTORY
2001, c. 261, §4 (NEW).

§5512. CHANGES

(REPEALED)

SECTION HISTORY
2001, c. 261, §4 (NEW). 2007, c. 402, Pt. T, §7 (RP).

§5513. DENIAL OF LICENSE

(REPEALED)

SECTION HISTORY
2001, c. 261, §4 (NEW). 2007, c. 402, Pt. T, §8 (RP).

§5514. INTERN FORESTER

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

1. **Scope of practice.** An intern forester license entitles the holder to perform forestry practices under the sponsorship of a forester.

[2001, c. 261, §4 (NEW) .]

2. **Professional qualifications.** Each applicant for an intern forester license shall submit evidence of an associate's degree or a bachelor's degree from a curriculum in forestry or of graduation from a postgraduate curriculum in forestry leading to a degree higher than a bachelor's degree in a school or college approved by the board. The board may grant a variance to an applicant who does not hold a degree pursuant to rules adopted by the board. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2003, c. 364, §1 (AMD) .]

3. **Filing with board.** The requirements for licensure as an intern forester are as follows.

A. The internship may not commence until after the applicant has met the professional qualification requirements of subsection 2. [2001, c. 261, §4 (NEW).]

B. Applicants shall apply to and be approved by the board for internship prior to beginning their internship. [2001, c. 261, §4 (NEW).]

C. (TEXT EFFECTIVE UNTIL 4/1/15) The applicant shall submit 3 references from persons demonstrating the applicant's good character to work as an intern forester. One of the references must be from the individual who is proposed to serve as the sponsor. [2003, c. 364, §2 (AMD).]

C. (TEXT EFFECTIVE 4/1/15) The applicant shall provide the name of the person who is proposed to serve as the sponsor. [2013, c. 527, §1 (AMD); 2013, c. 527, §9 (AFF).]

[2003, c. 364, §2 (AMD); 2013, c. 527, §1 (AMD); 2013, c. 527, §9 (AFF) .]

4. **Continuing education required.** As a prerequisite to renewal of an intern forester license, the applicant must complete continuing education as set forth by rules adopted by the board.

[2001, c. 261, §4 (NEW) .]

5. **Renewal.** Licenses expire annually on December 31st or on a date the commissioner determines. The board shall issue a renewal license, subject to the limitations set forth in subsection 6, upon receipt of the written request for renewal, the renewal fee as set under section 5507 and evidence of satisfactory completion of continuing education as set forth in subsection 4. Licenses may be renewed up to 90 days after the date of expiration upon payment of a late fee as set under section 5507 in addition to the renewal fee. A person who submits an application for renewal more than 90 days after the license has expired is required to pay an additional late fee as set under section 5507 in addition to the 90-day late fee and renewal fee.

[2007, c. 402, Pt. T, §9 (AMD) .]

6. **Limited license term.** Intern forester licenses may only be renewed for 5 annual terms. If after the 5th annual renewal term the intern forester has not qualified for licensure as a forester, the intern forester may reapply to recommence the internship process, but may not receive any credit towards completion of the new internship for work performed during the prior internship.

[2001, c. 261, §4 (NEW) .]

7. **Endorsement of documents.** Plans, maps and reports issued by the intern forester must be endorsed with the intern forester's name and license number during the life of the intern forester's license. By endorsing a document, the intern forester is representing that the document has been reviewed by the sponsor.

[2001, c. 261, §4 (NEW) .]

SECTION HISTORY
2001, c. 261, §4 (NEW). 2003, c. 364, §§1-3 (AMD). 2007, c. 402, Pt. T, §9 (AMD). 2013, c. 527, §1 (AMD). 2013, c. 527, §9 (AFF).

§5515. FORESTER

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

1. **Scope of practice.** A forester license entitles the holder to engage in the practice of forestry.

[2001, c. 261, §4 (NEW) .]

2. **Professional qualification.** The applicant must demonstrate compliance with the professional qualifications as set forth in section 5514, subsection 2.

[2001, c. 261, §4 (NEW) .]

3. (TEXT EFFECTIVE UNTIL 4/1/15) **Internship.** An applicant for a forester license shall complete an internship as follows.

A. An applicant with an associate's degree or no degree shall demonstrate 48 months of forestry experience as an intern forester satisfactory to the board. Applicants must complete the 48 months within 6 calendar years prior to application. [2001, c. 261, §4 (NEW).]

B. An applicant with a bachelor's degree or higher shall demonstrate 24 months of forestry experience as an intern forester satisfactory to the board. Applicants must complete the 24 months within 6 calendar years prior to application. [2001, c. 261, §4 (NEW).]

[2001, c. 261, §4 (NEW) .]

3. (TEXT EFFECTIVE 4/1/15) **Internship.** An applicant for a forester license shall complete an internship as follows.

A. An applicant with an associate degree or no degree shall demonstrate 48 months of forestry experience as an intern forester or as provided in this paragraph pursuant to rules adopted by the board. Notwithstanding the licensure requirements under this subchapter, an applicant with an associate degree may earn up to 12 months of forestry experience toward the 48-month requirement prior to the issuance of an intern forester license if:

(1) The forestry experience is obtained after the applicant has completed the first year of an associate degree program and prior to graduation from that program and is under the supervision of a forester registered with the board pursuant to subsection 10, paragraph B; or

(2) The applicant can demonstrate lawful prior professional forestry practice in another jurisdiction.

An applicant under this paragraph must complete the 48 months of experience within 6 calendar years prior to application. [2013, c. 527, §9 (AFF); 2013, c. 527, §2 (RPR).]

B. An applicant with a bachelor's degree or higher shall demonstrate 24 months of forestry experience as an intern forester or as provided in this paragraph pursuant to rules adopted by the board. An applicant with a bachelor's degree or higher may earn up to 12 months of forestry experience toward the 24-month requirement prior to the issuance of an intern forester license if:

(1) The forestry experience is obtained after the applicant has completed the junior year of the bachelor's degree program and prior to graduation and is under the supervision of a forester registered with the board pursuant to subsection 10, paragraph B; or

(2) The applicant can demonstrate lawful prior professional forestry practice in another jurisdiction.

An applicant under this paragraph must complete the 24 months of experience within 6 calendar years prior to application. [2013, c. 527, §9 (AFF); 2013, c. 527, §2 (RPR).]

[2013, c. 527, §9 (AFF); 2013, c. 527, §2 (RPR) .]

4. (TEXT EFFECTIVE UNTIL 4/1/15) **Recommendation.** The applicant shall submit references from 3 foresters familiar with the applicant's forestry practice. At least one of the references must be from the sponsor, unless the sponsor is unavailable as a reference through no fault of the applicant. An applicant exempted under subsection 5 shall submit references from 3 forestry professionals familiar with the applicant's forestry practice.

[2001, c. 261, §4 (NEW) .]

4. (TEXT EFFECTIVE 4/1/15) **Recommendation.** The applicant shall submit a reference from the sponsor, unless the sponsor is unavailable as a reference through no fault of the applicant. An applicant exempted under subsection 5 shall submit a reference from a forestry professional familiar with the applicant's forestry practice.

[2013, c. 527, §3 (AMD); 2013, c. 527, §9 (AFF) .]

5. (TEXT EFFECTIVE UNTIL 4/1/15) **Exemption to internship; professional practice in another jurisdiction.** Notwithstanding subsection 3, the board may waive the internship requirement, as set forth in subsection 3, for an applicant who has at least 24 months of lawful prior professional forestry practice in another jurisdiction within the 6-year period prior to application, as long as the practice is determined by the board to be substantially equivalent to the successful completion of forestry internship under subsection 3.

[2001, c. 261, §4 (NEW) .]

5. (TEXT EFFECTIVE 4/1/15) **Exemption to internship; professional practice in another jurisdiction.** Notwithstanding subsection 3, the board may waive the internship requirement, as set forth in subsection 3, for an applicant who has at least 24 months of lawful prior professional forestry practice in another jurisdiction within the 6-year period prior to application pursuant to rules adopted by the board.

[2013, c. 527, §3 (AMD); 2013, c. 527, §9 (AFF) .]

5-A. (TEXT EFFECTIVE 4/1/15) **Exemption to internship; professional practice as a federal employee.** Notwithstanding subsection 3, the board may waive the internship requirement, as set forth in subsection 3, for an applicant who has at least 24 months of prior professional forestry practice as an employee of the Federal Government within the 6-year period prior to application pursuant to rules adopted by the board.

[2013, c. 527, §4 (NEW); 2013, c. 527, §9 (AFF) .]

6. (TEXT EFFECTIVE UNTIL 4/1/15) **Examination.** Each applicant for a forester license shall submit an application and examination fee as set under section 5507 and successfully pass an examination approved by the board designed to test an individual's knowledge to engage in the practice of forestry. Applicants must meet all other qualifications for licensure prior to taking the examination.

[2007, c. 402, Pt. T, §10 (AMD) .]

6. (TEXT EFFECTIVE 4/1/15) **Examination.** Each applicant for a forester license shall submit an application and examination fee as set under section 5507 and successfully pass an examination approved by the board designed to test an individual's knowledge to engage in the practice of forestry. An applicant with an associate degree or higher from a program that has a curriculum in forestry from a school or college approved by the board is required to pass only the examination section that tests the applicant's knowledge of the State's forestry laws, rules and practices. Applicants must meet all other qualifications for licensure prior to taking the examination except that an applicant with a degree in forestry from a school or college approved by the board pursuant to rules adopted by the board may take the examination prior to meeting all of the qualifications for licensure.

[2013, c. 527, §5 (AMD); 2013, c. 527, §9 (AFF) .]

7. **Continuing education required.** As a prerequisite to renewal of a forester license, applicants must complete continuing education as set forth by rules adopted by the board.

[2001, c. 261, §4 (NEW) .]

8. **Renewal.** Licenses expire annually on December 31st or on a date the commissioner determines. The board shall issue a renewal license upon receipt of the written request for renewal, the renewal fee as set under section 5507 and evidence of satisfactory completion of continuing education as set forth in subsection 7. Licenses may be renewed up to 90 days after expiration upon payment of a late fee as set under section 5507 in addition to the renewal fee. A person who submits an application for renewal more than 90 days after the license expiration date is subject to all requirements governing new applicants under this chapter, except that the board may, in its discretion and giving due consideration to the protection of the public, waive examination and internship if the renewal application is within 2 years from the date of expiration for those applicants who demonstrate compliance with subsection 7 and upon payment of an additional late fee as set under section 5507 in addition to the 90-day late fee and renewal fee.

[2007, c. 402, Pt. T, §11 (AMD) .]

9. **Endorsement of documents.** Plans, maps and reports issued by the forester must be endorsed with the forester's name and license number during the life of the forester's license.

[2001, c. 261, §4 (NEW) .]

10. **Sponsor; supervisor.** A forester:

A. May act as a sponsor for an intern forester pursuant to the requirements of section 5514 and rules adopted by the board; and [2001, c. 261, §4 (NEW).]

B. Must register with the board to supervise the activities of an unlicensed person pursuant to rules adopted by the board.

Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2003, c. 364, §5 (AMD).]

[2003, c. 364, §5 (AMD) .]

SECTION HISTORY
2001, c. 261, §4 (NEW). 2003, c. 364, §§4, 5 (AMD). 2007, c. 402, Pt. T, §§ 10, 11 (AMD). 2013, c. 527, §§2-5 (AMD). 2013, c. 527, §9 (AFF).

§5516. NONRESIDENTS; APPLICANTS LICENSED IN ANOTHER JURISDICTION

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

1. (TEXT EFFECTIVE UNTIL 4/1/15) **Reciprocal agreements.** The board may enter into reciprocal agreements with other jurisdictions that have substantially equivalent licensure laws and accord substantially equal reciprocal rights to residents licensed in good standing in this State.

[2001, c. 261, §4 (NEW) .]

1. (TEXT REPEALED 4/1/15) **Reciprocal agreements.**

[2013, c. 527, §9 (AFF); 2013, c. 527, §6 (RP) .]

2. (TEXT EFFECTIVE UNTIL 4/1/15) **Applicants licensed in another jurisdiction.** An applicant who is licensed under the laws of another jurisdiction is governed by this subsection.

A. An applicant who is licensed under the laws of a jurisdiction that has a reciprocal agreement with the board may obtain a license upon the terms and conditions as agreed upon through the reciprocal agreement. [2001, c. 261, §4 (NEW).]

B. An applicant who is licensed in good standing under the laws of a jurisdiction that has not entered into a reciprocal agreement with the board may qualify for licensure by submitting evidence satisfactory to the board that the applicant has met all of the qualifications for licensure equivalent to those set forth by this subchapter for that level of licensure, including, but not limited to, passing the examination as required by section 5515, subsection 6. [2001, c. 261, §4 (NEW).]

C. All nonresident license applicants shall submit with the application an irrevocable consent that service of process on the applicant for an action filed in a court of this State arising out of the applicant's activities as a forester in this State may be made by delivery of the process to the Director of the Office of Professional and Occupational Regulation if, in the exercise of due diligence, a plaintiff can not effect personal service upon the applicant. [2001, c. 261, §4 (NEW); 2011, c. 286, Pt. B, §5 (REV).]

[2001, c. 261, §4 (NEW); 2011, c. 286, Pt. B, §5 (REV) .]

2. (TEXT EFFECTIVE 4/1/15) **Applicants licensed in another jurisdiction.** An applicant who is licensed under the laws of another jurisdiction is governed by this subsection.

A. [2013, c. 527, §9 (AFF); 2013, c. 527, §7 (RP).]

B. An applicant who is licensed in good standing under the laws of another jurisdiction may qualify for licensure pursuant to rules adopted by the board, including, but not limited to, passing the examination as required by section 5515, subsection 6. [2013, c. 527, §7 (AMD); 2013, c. 527, §9 (AFF).]

C. [2013, c. 527, §9 (AFF); 2013, c. 527, §7 (RP).]

[2013, c. 527, §7 (AMD); 2013, c. 527, §9 (AFF) .]

SECTION HISTORY
2001, c. 261, §4 (NEW). 2011, c. 286, Pt. B, §5 (REV). 2013, c. 527, §§6, 7 (AMD). 2013, c. 527, §9 (AFF).

Chapter 77: SPEECH-LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

Subchapter 1: GENERAL PROVISIONS

§6001. TITLE

(REPEALED)

SECTION HISTORY
1975, c. 705, §4 (NEW). 1997, c. 379, §2 (AMD). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §2 (RP).

§6002. STATEMENT OF PURPOSE

(REPEALED)

SECTION HISTORY
1975, c. 705, §4 (NEW). 1997, c. 379, §2 (AMD). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §2 (RP).

§6003. DEFINITIONS

(REPEALED)

SECTION HISTORY
1975, c. 705, §4 (NEW). 1989, c. 700, §A150 (AMD). 1997, c. 379, §§3-7 (AMD). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §2 (RP).

§6004. PERSONS AND PRACTICES AFFECTED

(REPEALED)

SECTION HISTORY
1975, c. 705, §4 (NEW). 1997, c. 379, §8 (RPR). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §2 (RP).

§6005. PERSONS AND PRACTICES NOT AFFECTED

(REPEALED)

SECTION HISTORY
1975, c. 705, §4 (NEW). 1989, c. 700, §A151 (AMD). 1997, c. 379, §9 (AMD). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §2 (RP).

Subchapter 2: BOARD OF EXAMINERS ON SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY (HEADING: PL 1997, C. 379, §10 (RPR); PL 2007, C. 369, PT. C, §2 (RP))

§6010. MEMBERSHIP; TERMS

(REPEALED)

SECTION HISTORY

1975, c. 705, §4 (NEW). 1983, c. 413, §197 (RPR). 1983, c. 812, §247 (AMD). 1989, c. 503, §B147 (AMD). 1993, c. 600, §A255 (AMD). 1997, c. 379, §11 (AMD). 1999, c. 687, §E6 (AMD). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §2 (RP).

§6011. MEETINGS; CHAIRMAN; QUORUM

(REPEALED)

SECTION HISTORY
1975, c. 705, §4 (NEW). 1983, c. 413, §198 (RPR). 1997, c. 379, §12 (AMD). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §2 (RP).

§6013. POWERS AND DUTIES

(REPEALED)

SECTION HISTORY
1975, c. 705, §4 (NEW). 1977, c. 694, §655 (AMD). 1983, c. 413, §§199-202 (AMD). 1995, c. 397, §77 (AMD). 1997, c. 379, §§13-15 (AMD). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §2 (RP).

Subchapter 3: LICENSE

§6020-A. ELIGIBILITY FOR LICENSE

(REPEALED)

SECTION HISTORY
1997, c. 379, §17 (NEW). 1997, c. 683, §B21 (RPR). 1999, c. 386, §Q1 (AMD). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §2 (RP).

§6020-B. SCOPE OF PRACTICE

(REPEALED)

SECTION HISTORY
1997, c. 379, §17 (NEW). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §2 (RP).

§6021. APPLICATION

(REPEALED)

SECTION HISTORY
1975, c. 705, §4 (NEW). 1997, c. 379, §18 (AMD). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §2 (RP).

§6022. EXAMINATION

(REPEALED)

SECTION HISTORY
1975, c. 705, §4 (NEW). 1997, c. 379, §18 (AMD). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §2 (RP).

§6023. WAIVER OF EXAMINATION

(REPEALED)

SECTION HISTORY
1975, c. 705, §4 (NEW). 1983, c. 413, §203 (AMD). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §2 (RP).

§6024. LICENSE

(REPEALED)

SECTION HISTORY
1975, c. 705, §4 (NEW). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §2 (RP).

§6025. TEMPORARY LICENSE

(REPEALED)

SECTION HISTORY
1975, c. 705, §4 (NEW). 1983, c. 413, §204 (AMD). 1987, c. 735, §66 (AMD). 1997, c. 379, §19 (AMD). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §2 (RP).

§6026. LICENSE; REFUSAL TO ISSUE OR RENEW; SUSPENSION; REVOCATION

(REPEALED)

SECTION HISTORY
1975, c. 705, §4 (NEW). 1977, c. 694, §656 (AMD). 1983, c. 413, §205 (AMD). 1997, c. 379, §§20,21 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §2 (RP).

§6027. LICENSE, RENEWAL

(REPEALED)

SECTION HISTORY
1975, c. 705, §4 (NEW). 1983, c. 413, §206 (AMD). 1997, c. 379, §22 (AMD). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §2 (RP).

§6028. FEES

(REPEALED)

SECTION HISTORY
1975, c. 705, §4 (NEW). 1983, c. 204, §11 (AMD). 1983, c. 413, §207 (AMD). 1991, c. 509, §27 (AMD). 1995, c. 397, §78 (AMD). 1995, c. 502, §H37 (AMD). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §2 (RP).

§6029. NOTICE

(REPEALED)

SECTION HISTORY
1975, c. 705, §4 (NEW). 1995, c. 397, §79 (AMD). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §2 (RP).

§6030. CONTINUING PROFESSIONAL EDUCATION

(REPEALED)

SECTION HISTORY
1975, c. 705, §4 (NEW). 1983, c. 413, §208 (AMD). 1983, c. 816, §A37 (AMD). 1997, c. 379, §23 (AMD). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §2 (RP).

§6031. PENALTY

(REPEALED)

SECTION HISTORY
1975, c. 705, §4 (NEW). 1983, c. 413, §209 (RPR). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2001, c. 421, §B100 (AMD). 2001, c. 421, §C1 (AFF). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 369, Pt. C, §2 (RP).

Chapter 79: PRIVATE INVESTIGATORS

§6051. DEFINTIIONS

(REPEALED)

SECTION HISTORY
1977, c. 508, §3 (NEW). 1977, c. 696, §252 (AMD). 1981, c. 126, §1 (RP).

§6052. AUTHORITY OF THE COMMISSIONER OF PUBLIC SAFETY RELATING TO RULES AND REGULATIONS; PETITIONS

(REPEALED)

SECTION HISTORY
1977, c. 508, §3 (NEW). 1977, c. 696, §253 (AMD). 1981, c. 126, §1 (RP).

§6053. SUBPOENAS; OATHS; CONTEMPT POWERS

(REPEALED)

SECTION HISTORY
1977, c. 508, §3 (NEW). 1981, c. 126, §1 (RP).

§6054. PUBLIC NOTICE OF PROPOSED RULE-MAKING

(REPEALED)

SECTION HISTORY
1977, c. 508, §3 (NEW). 1981, c. 126, §1 (RP).

§6055. WHEN LICENSE REQUIRED; EXCEPTIONS; PENALTIES

(REPEALED)

SECTION HISTORY
1977, c. 508, §3 (NEW). 1979, c. 209, §1 (AMD). 1981, c. 126, §1 (RP).

§6056. APPLICATION FOR LICENSE

(REPEALED)

SECTION HISTORY
1977, c. 508, §3 (NEW). 1977, c. 696, §254 (AMD). 1981, c. 126, §1 (RP).

§6057. GRANTING OF LICENSES

(REPEALED)

SECTION HISTORY
1977, c. 508, §3 (NEW). 1981, c. 126, §1 (RP). 1981, c. 470, §A155 (AMD). 1981, c. 698, §163 (RP).

§6058. FEES

(REPEALED)

SECTION HISTORY
1977, c. 508, §3 (NEW). 1981, c. 126, §1 (RP).

§6059. BONDING REQUIREMENTS

(REPEALED)

SECTION HISTORY
1977, c. 508, §3 (NEW). 1981, c. 126, §1 (RP).

§6060. ASSISTANT PRIVATE DETECTIVE'S LICENSE; PENALTY FOR MAKING FALSE STATEMENTS OR REPORTS OR DIVULGING INFORMATION

(REPEALED)

SECTION HISTORY
1977, c. 508, §3 (NEW). 1977, c. 696, §255 (AMD). 1981, c. 126, §1 (RP).

§6061. PUBLIC OFFICIALS

(REPEALED)

SECTION HISTORY
1977, c. 508, §3 (NEW). 1981, c. 126, §1 (RP).

§6062. UNLAWFUL ACTS

(REPEALED)

SECTION HISTORY
1977, c. 508, §3 (NEW). 1981, c. 126, §1 (RP).

§6063. PROHIBITED ACTIVITIES IN CONNECTION WITH STRIKES; LABOR DISPUTES

(REPEALED)

SECTION HISTORY
1977, c. 508, §3 (NEW). 1981, c. 126, §1 (RP).

§6064. LICENSEE IDENTIFICATION CARDS

(REPEALED)

SECTION HISTORY
1977, c. 508, §3 (NEW). 1981, c. 126, §1 (RP).

§6065. JUDICIAL REVIEW

(REPEALED)

SECTION HISTORY
1977, c. 508, §3 (NEW). 1981, c. 126, §1 (RP).

§6066. SEVERABILITY CLAUSE

(REPEALED)

SECTION HISTORY
1977, c. 508, §3 (NEW). 1981, c. 126, §1 (RP).

Chapter 80: MONEY TRANSMITTERS AND CHECK CASHERS

Subchapter 1: MONEY TRANSMITTERS
HEADING: PL 1997, C. 155, PT. A, §2 (NEW)

§6101. SHORT TITLE

This subchapter may be known and cited as the "Money Transmitters Act." [1997, c. 155, Pt. A, §2 (NEW).]

SECTION HISTORY
1997, c. 155, §A2 (NEW).

§6102. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1997, c. 155, Pt. A, §2 (NEW).]

1. **Administrator.** "Administrator" means the Superintendent of Consumer Credit Protection within the Department of Professional and Financial Regulation.

[1997, c. 155, Pt. A, §2 (NEW); 2007, c. 273, Pt. B, §6 (REV); 2007, c. 695, Pt. A, §47 (AFF) .]

2. **Applicant.** "Applicant" means a person filing an application for a license under this subchapter.

[1997, c. 155, Pt. A, §2 (NEW) .]

3. **Authorized delegate.** "Authorized delegate" means an entity designated by the licensee under the provisions of this subchapter to engage in the business of selling or issuing payment instruments or to engage in the business of transmitting money on behalf of a licensee.

[1997, c. 155, Pt. A, §2 (NEW) .]

4. **Control.** "Control" means ownership of, or the power to vote, 25% or more of the outstanding voting securities of a licensee or controlling person. For purposes of determining the percentage of a licensee controlled by any person, the person's interest may be aggregated with the interest of any other person controlled by the person or by any spouse, parent, or child of the person.

[1997, c. 155, Pt. A, §2 (NEW) .]

5. **Controlling person.** "Controlling person" means any person in control of a licensee.

[1997, c. 155, Pt. A, §2 (NEW) .]

6. **Executive officer.** "Executive officer" means a licensee's president, senior officer responsible for the licensee's business, chief financial officer or any other person who performs similar functions.

[1997, c. 155, Pt. A, §2 (NEW) .]

7. **Key shareholder.** "Key shareholder" means a person or group of persons acting in concert that is the owner of 25% or more of any voting class of an applicant's stock.

[1997, c. 155, Pt. A, §2 (NEW) .]

8. **Licensee.** "Licensee" means a person licensed under this subchapter.

[1997, c. 155, Pt. A, §2 (NEW) .]

9. **Material litigation.** "Material litigation" means any litigation that, according to generally accepted accounting principles, is considered significant to an applicant's or licensee's financial health and would be required to be referenced in that entity's annual audited financial statements, report to shareholders or similar documents.

[1997, c. 155, Pt. A, §2 (NEW) .]

10. **Money transmission.** "Money transmission" means the business of selling or issuing payment instruments or the business of receiving money for transmission or transmitting money within the United States or to locations abroad by any means, including, but not limited to, payment instrument, wire, facsimile or electronic transfer.

[1997, c. 155, Pt. A, §2 (NEW) .]

11. **Outstanding payment instrument.** "Outstanding payment instrument" means a payment instrument issued by the licensee that has been sold in the United States directly by the licensee or a payment instrument issued by the licensee that has been sold by an authorized delegate in the United States, and has been reported to the licensee as having been sold, and that has not yet been paid by or for the licensee.

[1997, c. 155, Pt. A, §2 (NEW) .]

12. **Payment instrument.** "Payment instrument" means a check, draft, money order, travelers check or other instrument or written order for the transmission or payment of money, sold or issued to one or more persons, whether or not the instrument is negotiable. The term does not include a credit card voucher, a letter of credit or any instrument that is redeemable by the issuer in goods or services.

[1997, c. 155, Pt. A, §2 (NEW) .]

13. **Person.** "Person" means an individual, partnership, association, joint-stock association, limited liability company, trust or corporation.

[1997, c. 155, Pt. A, §2 (NEW) .]

14. **Remit.** "Remit" means either to make direct payment of the funds to the licensee or its representatives authorized to receive those funds, or to deposit the funds in a bank, credit union or savings and loan association or other similar financial institution in an account specified by the licensee.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY
1997, c. 155, §A2 (NEW). 2007, c. 273, Pt. B, §7 (AFF). 2007, c. 273, Pt. B, §6 (REV). 2007, c. 695, Pt. A, §47 (AFF).

§6103. LICENSE REQUIRED

1. **License required.** On or after January 1, 1998, a person, except one exempt pursuant to section 6104, may not engage in the business of money transmission without a license as provided in this subchapter.

[1997, c. 155, Pt. A, §2 (NEW) .]

2. **Single license; multiple locations.** A licensee may conduct business in this State at one or more locations, directly or indirectly owned, or through one or more authorized delegates, or both, pursuant to the single license granted to the licensee, subject to the registration requirements of section 6109.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY
1997, c. 155, §A2 (NEW).

§6104. EXEMPTIONS

1. **Exemptions.** This subchapter does not apply to:

A. The United States or any department, agency, or instrumentality of the United States; [1997, c. 155, Pt. A, §2 (NEW).]

B. The United States Post Office; [1997, c. 155, Pt. A, §2 (NEW).]

C. The State or any political subdivisions of the State; [1997, c. 155, Pt. A, §2 (NEW).]

D. Supervised financial organizations as defined in Title 9-A, section 1-301, subsection 38-A as long as they do not engage in the business of issuing or selling payment instruments through authorized delegates who are not supervised financial organizations as defined in Title 9-A, section 1-301, subsection 38-A; and [2001, c. 371, §13 (AMD).]

E. The provision of electronic transfer of government benefits for any federal, state or county governmental agency as defined in Federal Reserve Board Regulation E, by a contractor for and on behalf of the United States or any department, agency or instrumentality of the United States, or any state or any political subdivisions of a state. [1997, c. 155, Pt. A, §2 (NEW).]

[2001, c. 371, §13 (AMD) .]

2. **Delegates of a licensee.** Authorized delegates of a licensee, acting within the scope of authority conferred by a written contract as described in section 6118, are not required to obtain a license pursuant to this subchapter.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY
1997, c. 155, §A2 (NEW). 2001, c. 371, §13 (AMD).

§6105. LICENSE QUALIFICATIONS

1. **Net worth requirements.** A licensee under this subchapter must have at all times a net worth of not less than $100,000, calculated in accordance with generally accepted accounting principles. Licensees engaging in money transmission at more than one location or through authorized delegates must have an additional net worth of $50,000 per location or agent located in the State, up to a maximum of $500,000.

[1997, c. 155, Pt. A, §2 (NEW) .]

2. **Corporate applicants.** A corporate applicant, at the time of filing an application for a license under this subchapter and at all times after a license is issued, must be in good standing in the state of its incorporation. A noncorporate applicant, at the time of filing an application for a license under this subchapter and at all times after a license is issued, must be registered or qualified to do business in this State.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY
1997, c. 155, §A2 (NEW).

§6106. LICENSE APPLICATION

An application for a license under this subchapter must be in writing, under oath and in a form prescribed by the administrator. [1997, c. 155, Pt. A, §2 (NEW).]

1. **All applicants.** For all applicants, the application must include:

A. The exact name of the applicant, the applicant's principal address, any fictitious or trade name used by the applicant in the conduct of its business and the location of the applicant's business records; [1997, c. 155, Pt. A, §2 (NEW).]

B. The history of the applicant's material litigation and criminal convictions for the 5-year period prior to the date of the application; [1997, c. 155, Pt. A, §2 (NEW).]

C. A description of the activities conducted by the applicant and a history of operations; [1997, c. 155, Pt. A, §2 (NEW).]

D. A description of the business activities in which the applicant seeks to be engaged in the State; [1997, c. 155, Pt. A, §2 (NEW).]

E. A list identifying the applicant's proposed authorized delegates in the State, if any, at the time of the filing of the license application; [1997, c. 155, Pt. A, §2 (NEW).]

F. A sample authorized delegate contract, if applicable; [1997, c. 155, Pt. A, §2 (NEW).]

G. A sample form of payment instrument, if applicable; [1997, c. 155, Pt. A, §2 (NEW).]

H. The locations at which the applicant and its authorized delegates, if any, propose to conduct the licensed activities in the State; and [1997, c. 155, Pt. A, §2 (NEW).]

I. The name and address of the clearing bank or banks on which the applicant's payment instruments will be drawn or through which the payment instruments will be payable. [1997, c. 155, Pt. A, §2 (NEW).]

[1997, c. 155, Pt. A, §2 (NEW) .]

2. **Corporate applicants.** In addition to the information required by subsection 1, if the applicant is a corporation, the applicant must provide:

A. The date of the applicant's incorporation and state of incorporation; [1997, c. 155, Pt. A, §2 (NEW).]

B. A certificate of good standing from the state in which the applicant was incorporated; [1997, c. 155, Pt. A, §2 (NEW).]

C. A description of the corporate structure of the applicant, including the identity of any parent or subsidiary of the applicant, and whether any parent or subsidiary is publicly traded on any stock exchange; [1997, c. 155, Pt. A, §2 (NEW).]

D. The name, business and residence addresses, and employment history for the past 5 years of the applicant's executive officers and the officers or managers who will be in charge of the applicant's activities to be licensed; [1997, c. 155, Pt. A, §2 (NEW).]

E. The name, business and residence addresses and employment history for the period 5 years prior to the date of the application of any key shareholder of the applicant; [1997, c. 155, Pt. A, §2 (NEW).]

F. The history of material litigation and criminal convictions for the 5-year period prior to the date of the application of every executive officer or key shareholder of the applicant; [1997, c. 155, Pt. A, §2 (NEW).]

G. A copy of the applicant's most recent audited financial statement, including balance sheet, statement of income or loss, statement of changes in shareholder equity and statement of changes in financial position, and, if available, the applicant's audited financial statements for the immediately preceding 2-year period. With the approval of the administrator, if the applicant is a wholly owned subsidiary of another corporation, the applicant may submit either the parent corporation's consolidated audited financial statements for the current year and for the immediately preceding 2-year period or the parent corporation's Form 10K reports filed with the United States Securities and Exchange Commission for the prior 3 years in lieu of the applicant's financial statements. With the approval of the administrator, if the applicant is a wholly owned subsidiary of a corporation having its principal place of business outside the United States, similar documentation filed with the parent corporation's non-United States regulator may be submitted to satisfy this provision; and [1997, c. 155, Pt. A, §2 (NEW).]

H. Copies of all filings, if any, made by the applicant with the United States Securities and Exchange Commission, or with a similar regulator in a country other than the United States within the year preceding the date of filing of the application. [1997, c. 155, Pt. A, §2 (NEW).]

[1997, c. 155, Pt. A, §2 (NEW) .]

3. **Noncorporate applicants.** In addition to the information required by subsection 1, if the applicant is not a corporation, the applicant must provide:

A. The name, business and residence addresses, personal financial statement and employment history for the past 5 years of each principal of the applicant and the name, business and residence addresses and employment history for the past 5 years of any other person or persons who will be in charge of the applicant's activities to be licensed; [1997, c. 155, Pt. A, §2 (NEW).]

B. The place and date of the applicant's registration or qualification to do business in this State; [1997, c. 155, Pt. A, §2 (NEW).]

C. The history of material litigation and criminal convictions for the 5-year period prior to the date of the application for each individual having an ownership interest in the applicant and each individual who exercises supervisory responsibility with respect to the applicant's activities; and [1997, c. 155, Pt. A, §2 (NEW).]

D. Copies of the applicant's audited financial statements, including balance sheet, statement of income or loss and statement of changes in financial position for the current year and, if available, for the immediately preceding 2-year period. [1997, c. 155, Pt. A, §2 (NEW).]

[1997, c. 155, Pt. A, §2 (NEW) .]

The administrator is authorized, for good cause shown, to waive any requirement of this section with respect to any license application or to permit a license applicant to submit substituted information in its license application in lieu of the information required by this section. [1997, c. 155, Pt. A, §2 (NEW).]

SECTION HISTORY
1997, c. 155, §A2 (NEW).

§6107. BOND OR OTHER SECURITY DEVICE

1. **Bond or other security device required.** Each application must be accompanied by a surety bond, irrevocable letter of credit or other similar security device, referred to in this section as a "security device," in the amount of $100,000. The security device must be in a form satisfactory to the administrator and must run to the administrator for the benefit of any claimants against the licensee to secure the faithful performance of the obligations of the licensee with respect to the receipt, handling, transmission and payment of money in connection with the sale and issuance of payment instruments and transmission of money. In the case of a bond, the aggregate liability of the surety may not exceed the principal sum of the bond. Any claim against the bond or security device may be the subject of an administrative hearing and order pursuant to section 6121.

[1997, c. 155, Pt. A, §2 (NEW) .]

2. **Deposit in lieu of security device.** In lieu of a security device or of any portion of the principal of the security device, as required by this section, the licensee may deposit with the administrator, or with such banks in this State as the licensee may designate and the administrator may approve, cash, interest-bearing stocks and bonds, notes, debentures or other obligations of the United States or any agency or instrumentality of the United States, or guaranteed by the United States, or of this State, or of a city, county, town, village, school district or instrumentality of this State, or guaranteed by this State, to an aggregate amount, based upon principal amount or market value, whichever is lower, of not less than the amount of the security device or portion of the security device. The securities or cash must be deposited as and held to secure the same obligations as would the security device, but the depositor is entitled to receive all interest and dividends on the security device, has the right, with the approval of the administrator, to substitute other securities for those deposited, and is required to do so on written order of the administrator made for good cause shown.

[1997, c. 155, Pt. A, §2 (NEW) .]

3. **Cancellation.** The security device remains in effect until cancellation, which may occur only after 30 days' written notice to the administrator. Cancellation does not affect any liability incurred or accrued during that period.

[1997, c. 155, Pt. A, §2 (NEW) .]

4. **Five-year limit.** The security device remains in place for 5 years after the licensee ceases money transmission operations in the State. Notwithstanding this provision, the administrator may permit the security device to be reduced or eliminated prior to that time to the extent that the amount of the licensee's payment instruments outstanding in this State are reduced. The administrator may also permit a licensee to substitute a letter of credit or other form of security device acceptable to the administrator for the security device in place at the time the licensee ceases money transmission operations in the State.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY
1997, c. 155, §A2 (NEW).

§6108. APPLICATION FEE

Each application must be accompanied by a nonrefundable application fee in the amount of $500. The application fee also constitutes the license fee for the applicant's first year of activities if the license is granted. In addition, the application must be accompanied by a registration fee of $50 for each authorized delegate designated by the licensee, up to a maximum of $2,500. [1997, c. 155, Pt. A, §2 (NEW).]

SECTION HISTORY

1997, c. 155, §A2 (NEW).

§6109. ISSUANCE OF LICENSE

1. **Investigation.** Upon the filing of a complete application, the administrator shall investigate the financial condition and responsibility, financial and business experience, character and general fitness of the applicant. The administrator may conduct an on-site investigation of the applicant, the reasonable cost of which must be paid by the applicant. If the administrator finds that the applicant's business will be conducted honestly, fairly and in a manner commanding the confidence and trust of the community, that the applicant has fulfilled the requirements imposed by this subchapter and that the applicant has paid the required license fee, the administrator shall issue a license to the applicant authorizing the applicant to engage in the licensed activities in this State for a term of one year. If these requirements have not been met, the administrator shall deny the application in writing that states the reasons for the denial.

[1997, c. 155, Pt. A, §2 (NEW) .]

2. **Timely review.** The administrator shall approve or deny every application for an original license within 120 days from the date a complete application is submitted, unless the administrator extends the period for good cause. The administrator shall notify the applicant of the date when the application is considered complete.

[1997, c. 155, Pt. A, §2 (NEW) .]

3. **Appeal of license denial.** An applicant aggrieved by a denial issued by the administrator under this section may at any time within 30 days from the date of receipt of written notice of the denial contest the denial by serving a response on the administrator. The administrator shall set a date for a hearing not later than 60 days after service of the response, unless a later date is set with the consent of the aggrieved applicant.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY
1997, c. 155, §A2 (NEW).

§6110. RENEWAL OF LICENSE AND ANNUAL REPORT

1. **Renewal fee.** A renewal application must be accompanied by a nonrefundable application fee in the amount of $250, plus a registration fee of $50 for each authorized delegate designated by a licensee, up to a maximum of $2,500.

[1997, c. 155, Pt. A, §2 (NEW) .]

2. **Annual report.** The renewal fee must be accompanied by a report in a form prescribed by the administrator. The form must be sent by the administrator to each licensee no later than 3 months immediately preceding the date established by the administrator for license renewal. The licensee must include the following in its annual renewal report:

A. A copy of its most recent audited annual financial statement, including balance sheet, statement of income or loss, statement of changes in shareholder's equity and statement of changes in financial position. With the approval of the administrator, in the case of a licensee that is a wholly owned subsidiary of another corporation, the consolidated audited annual financial statement of the parent corporation may be filed in lieu of the licensee's audited annual financial statement; [1997, c. 155, Pt. A, §2 (NEW).]

B. For the most recent quarter for which data are available prior to the date of the filing of the renewal application, but in no event more than 120 days prior to the renewal date, the number of payment instruments sold by the licensee in the State, the dollar amount of those instruments and the dollar amount of those instruments currently outstanding; [1997, c. 155, Pt. A, §2 (NEW).]

C. Any material changes to any of the information submitted by the licensee on its original application that have not previously been reported to the administrator on any other report required to be filed under this subchapter; and [1997, c. 155, Pt. A, §2 (NEW).]

D. A list of the locations within this State at which business regulated by this subchapter is being conducted by either the licensee or its authorized delegate. [1997, c. 155, Pt. A, §2 (NEW).]

The administrator is authorized, for good cause shown, to waive any requirement of this subsection with respect to any renewal application or to permit a renewal applicant to submit substituted information in its renewal application in lieu of the information required by this subsection.

[1997, c. 155, Pt. A, §2 (NEW) .]

3. **Suspension.** A licensee that has not filed a renewal report or paid its renewal fee by the renewal filing deadline and has not been granted an extension of time to do so by the administrator must be notified by the administrator, in writing, that its license is suspended. At the licensee's request, the suspension may be stayed, and a hearing will be scheduled, at which time the licensee will be required to show cause why its license should not be suspended pending compliance with these requirements.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY
1997, c. 155, §A2 (NEW).

§6111. EXTRAORDINARY REPORTING REQUIREMENTS

1. **Written report.** Within 15 days of the occurrence of any one of the events listed below, a licensee shall file a written report with the administrator describing the event and its expected impact on the licensee's activities in the State:

A. The filing for bankruptcy or reorganization by the licensee; [1997, c. 155, Pt. A, §2 (NEW).]

B. The institution of revocation or suspension proceedings against the licensee by any state or governmental authority with regard to the licensee's money transmission activities; [1997, c. 155, Pt. A, §2 (NEW).]

C. A felony indictment of the licensee or any of its executive officers or directors related to money transmission activities; or [1997, c. 155, Pt. A, §2 (NEW).]

D. A felony conviction of the licensee or any of its executive officers or directors related to money transmission activities. [1997, c. 155, Pt. A, §2 (NEW).]

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY
1997, c. 155, §A2 (NEW).

§6112. CHANGES IN CONTROL OF A LICENSEE

Within 15 days of a change or acquisition of control of a licensee, the licensee shall provide notice of the event to the administrator in writing and in such form as the administrator may prescribe, and with such information, data and records as the administrator may require. The administrator may waive this notification requirement if, in the administrator's discretion, the change in control does not pose any risk to the interests of the public. [1997, c. 155, Pt. A, §2 (NEW).]

SECTION HISTORY
1997, c. 155, §A2 (NEW).

§6113. EXAMINATIONS

1. **On-site examination.** The administrator may conduct an annual on-site examination of a licensee. The licensee shall pay all necessarily incurred costs of the examination. The on-site examination may be conducted in conjunction with examinations to be performed by representatives of agencies of another state or states.

[1997, c. 155, Pt. A, §2 (NEW) .]

2. **Financial data.** The administrator may request financial data from a licensee in addition to the data required under section 6110, subsection 2, or conduct an on-site examination of any authorized delegate or location of a licensee within this State. When the administrator examines an authorized delegate's operations, the authorized delegate shall pay all necessarily incurred costs of the examination. When the administrator examines a licensee's location, the licensee shall pay all necessarily incurred costs of the examination.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY
1997, c. 155, §A2 (NEW).

§6114. MAINTENANCE OF RECORDS

1. **Schedule.** Each licensee shall make, keep and preserve the following books, accounts and other records for a period of 3 years:

A. A record or records of each payment instrument sold; [1997, c. 155, Pt. A, §2 (NEW).]

B. A general ledger posted at least monthly containing all assets, liability, capital, income and expense accounts; [1997, c. 155, Pt. A, §2 (NEW).]

C. Settlement sheets received from authorized delegates; [1997, c. 155, Pt. A, §2 (NEW).]

D. Bank statements and bank reconciliation records; [1997, c. 155, Pt. A, §2 (NEW).]

E. Records of outstanding payment instruments; [1997, c. 155, Pt. A, §2 (NEW).]

F. Records of each payment instrument paid within the 3-year period; and [1997, c. 155, Pt. A, §2 (NEW).]

G. A list of the names and addresses of all of the licensee's authorized delegates. [1997, c. 155, Pt. A, §2 (NEW).]

[1997, c. 155, Pt. A, §2 (NEW) .]

2. **Electronic form.** Maintenance of the documents as required by this section in a photographic, electronic or other similar form constitutes compliance with this section.

[1997, c. 155, Pt. A, §2 (NEW) .]

3. **Location.** With the approval of the administrator, records may be maintained at a location outside this State so long as they are made accessible to the administrator on 7 days' written notice.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY
1997, c. 155, §A2 (NEW).

§6115. CONFIDENTIALITY OF DATA SUBMITTED TO THE ADMINISTRATOR

1. **Financial information.** Financial information not normally available to the public that is submitted in confidence by an individual or organization to comply with licensing, registration or other regulatory functions of the administrator is confidential.

[1997, c. 155, Pt. A, §2 (NEW) .]

2. **Aggregate data.** Nothing in this section prohibits the administrator from releasing to the public a list of persons licensed under this subchapter or from releasing aggregated financial data on such licensees.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY
1997, c. 155, §A2 (NEW).

§6116. SUSPENSION OR REVOCATION OF LICENSES

After notice and hearing, the administrator may suspend or revoke a licensee's license if the administrator finds that: [1997, c. 155, Pt. A, §2 (NEW).]

1. **Grounds for denial.** A fact or condition exists that, if it had existed at the time when the licensee applied for its license, would have been grounds for denying the application;

[1997, c. 155, Pt. A, §2 (NEW) .]

2. **Inadequate net worth.** The licensee's net worth becomes inadequate and the licensee, after 10 days' written notice from the administrator, fails to take such steps as the administrator determines necessary to remedy the deficiency;

[1997, c. 155, Pt. A, §2 (NEW) .]

3. **Violations.** The licensee knowingly violates any material provision of this subchapter or any rule or order validly promulgated by the administrator under authority of this subchapter;

[1997, c. 155, Pt. A, §2 (NEW) .]

4. **Safety and soundness.** The licensee is conducting its business in an unsafe or unsound manner;

[1997, c. 155, Pt. A, §2 (NEW) .]

5. **Insolvency.** The licensee is insolvent;

[1997, c. 155, Pt. A, §2 (NEW) .]

6. **Failure to meet obligations.** The licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors or has admitted in writing its inability to pay its debts as they become due;

[1997, c. 155, Pt. A, §2 (NEW) .]

7. **Bankruptcy.** The licensee has applied for an adjudication of bankruptcy, reorganization, arrangement or other relief under any bankruptcy;

[1997, c. 155, Pt. A, §2 (NEW) .]

8. **Refusal of examination.** The licensee refuses to permit the administrator to make an examination authorized by this subchapter;

[1997, c. 155, Pt. A, §2 (NEW) .]

9. **Failure to respond.** The licensee fails to promptly and adequately respond to communications from the administrator; or

[1997, c. 155, Pt. A, §2 (NEW) .]

10. **Failure to file report.** The licensee willfully fails to make a report required by this subchapter.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY
1997, c. 155, §A2 (NEW).

§6117. AUTHORIZED DELEGATE CONTRACTS

A licensee desiring to conduct licensed activities through authorized delegates shall authorize each delegate to operate pursuant to an express written contract. Contracts entered into after the effective date of this subchapter must provide the following: [1997, c. 155, Pt. A, §2 (NEW).]

1. **Appointment.** That the licensee appoints the person as its delegate with authority to engage in money transmission on behalf of the licensee;

[1997, c. 155, Pt. A, §2 (NEW) .]

2. **Authorization for subdelegates.** That neither a licensee nor an authorized delegate may authorize subdelegates without the written consent of the administrator; and

[1997, c. 155, Pt. A, §2 (NEW) .]

3. **Regulation.** That licensees are subject to supervision and regulation by the administrator.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY
1997, c. 155, §A2 (NEW).

§6118. AUTHORIZED DELEGATE CONDUCT

1. **Misrepresentation.** An authorized delegate may not make any fraudulent or false statement or misrepresentation to a licensee or to the administrator.

[1997, c. 155, Pt. A, §2 (NEW) .]

2. **Written procedures.** All money transmission or sale or issuance of payment instrument activities conducted by authorized delegates must be strictly in accordance with the licensee's written procedures provided to the authorized delegate.

[1997, c. 155, Pt. A, §2 (NEW) .]

3. **Remittance.** An authorized delegate shall remit all money owing to the licensee in accordance with the terms of the contract between the licensee and the authorized delegate. The failure of an authorized delegate to remit all money owing to a licensee within the time presented results in liability of the authorized delegate to the licensee for 3 times the licensee's actual damages. The administrator may set, by rule, the maximum remittance time.

[1997, c. 155, Pt. A, §2 (NEW) .]

4. **Inspection.** An authorized delegate is deemed to consent to the administrator's inspection, with or without prior notice to the licensee or authorized delegate, of the books and records of the authorized delegate when the administrator has a reasonable basis to believe that the licensee or authorized delegate is in noncompliance with this subchapter.

[1997, c. 155, Pt. A, §2 (NEW) .]

5. **Duty to act.** An authorized delegate is under a duty to act only as authorized under the contract with the licensee and an authorized delegate that exceeds its authority is subject to cancellation of its contract and further disciplinary action by the administrator.

[1997, c. 155, Pt. A, §2 (NEW) .]

6. **Commingling funds.** All funds, less fees, received by an authorized delegate from the sale or delivery of a payment instrument issued by a licensee or received by an authorized delegate for transmission must, from the time the funds are received by the authorized delegate until the funds or an equivalent amount are remitted by the authorized delegate to the licensee, constitute trust funds owned by and belonging to the licensee. If an authorized delegate commingles any such funds with any other funds or property owned or controlled by the authorized delegate, all commingled proceeds and other property are impressed with a trust in favor of the licensee in an amount equal to the amount of the proceeds due the licensee.

[1997, c. 155, Pt. A, §2 (NEW) .]

7. **Theft or loss of payment instruments.** An authorized delegate shall report to the licensee the theft or loss of payment instruments within 24 hours from the time the licensee knew or should have known of the theft or loss.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY
1997, c. 155, §A2 (NEW).

§6119. REVOCATION OR SUSPENSION OF AUTHORIZED DELEGATES

1. **Suspension.** The administrator may issue an order suspending or barring an authorized delegate from continuing to be or barring a person from becoming an authorized delegate of any licensee during the period for which the order is in effect. Upon issuance of the order, the licensee shall terminate its relationship with the authorized delegate according to the terms of the order. Orders may be issued if, after notice and a hearing, the administrator finds that any authorized delegate of a licensee or any administrator, officer, employee or controlling person of the authorized delegate:

A. Has violated a provision of this subchapter or of any rule or order issued under this subchapter; [1997, c. 155, Pt. A, §2 (NEW).]

B. Has engaged in or participated in an unsafe or unsound act with respect to the business of selling or issuing payment instruments of the licensee or the business of money transmission; or [1997, c. 155, Pt. A, §2 (NEW).]

C. Has made or caused to be made in any application or report filed with the administrator or in any proceeding before the administrator a statement that was, at the time and in the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact that is required to be stated in an application or report. [1997, c. 155, Pt. A, §2 (NEW).]

[1997, c. 155, Pt. A, §2 (NEW) .]

2. **Modification of order.** An authorized delegate to whom an order is issued under this section may apply to the administrator to modify or rescind the order. The administrator may not grant the application unless the administrator finds that it is in the public interest to do so and that it is reasonable to believe that the person will, if and when such person is permitted to resume being or to become an authorized delegate, comply with all applicable provisions of this subchapter and of any rule and order issued under this subchapter.

[1997, c. 155, Pt. A, §2 (NEW) .]

3. **Judicial review.** The right of a person to whom an order is issued under this section to petition for judicial review of an order is not affected by the failure of the person to apply to the administrator to modify or rescind the order.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY
1997, c. 155, §A2 (NEW).

§6120. LICENSEE LIABILITY

Except in cases of gross negligence or intentional acts that result in harm to a person, a licensee's responsibility to a person for a money transmission conducted on that person's behalf by the licensee or the licensee's authorized delegate is limited to the amount of money transmitted or the face amount of the payment instrument purchased. [1997, c. 155, Pt. A, §2 (NEW).]

SECTION HISTORY
1997, c. 155, §A2 (NEW).

§6121. HEARINGS; PROCEDURES

The provisions of the Maine Administrative Procedure Act apply to any hearing conducted pursuant to this subchapter. [1997, c. 155, Pt. A, §2 (NEW).]

SECTION HISTORY
1997, c. 155, §A2 (NEW).

§6122. CIVIL PENALTIES

1. **Civil penalty.** If, after notice and hearing, the administrator finds that a person has intentionally violated this subchapter or a rule adopted under this subchapter, the administrator may order the person to pay to the administrator a civil penalty in an amount specified by the administrator, not to exceed $1,000 for each violation or, in the case of a continuing violation, $1,000 for each day that the violation continues. A proceeding may not be initiated and a penalty may not be assessed pursuant to this section until after the person has been notified in writing of the nature of the violation, has been afforded a reasonable period of time, as set forth in the notice, to correct the violation and has failed to do so.

[1997, c. 155, Pt. A, §2 (NEW) .]

2. **Settlement.** The administrator, in the exercise of the administrator's reasonable judgment, is authorized to compromise or settle with and collect civil penalties and other costs from any person for violations of any provision of this subchapter, or of any rule or order issued pursuant to this subchapter.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY
1997, c. 155, §A2 (NEW).

§6123. ENFORCEMENT

1. **Court order.** If it appears to the administrator that any person has committed or is about to commit a violation of any provision of this subchapter or of any rule or order of the administrator, the administrator may, after notice and hearing, issue a cease and desist order, and may apply to the Superior Court or District Court for an order enjoining that person from violating or continuing to violate this subchapter or any rule or order and for injunctive or such other relief as the nature of the case may require.

[1997, c. 155, Pt. A, §2 (NEW); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

2. **Consent agreements.** The administrator may enter into consent orders at any time with any person to resolve any matter arising under this subchapter. A consent order must be signed by the person to whom it is issued or a duly authorized representative, and must indicate agreement to the terms contained in the order. A consent order is not required to constitute an admission by any person that any provision of this subchapter, or any rule or order issued under this subchapter has been violated, and is not required to constitute a finding by the administrator that the person has violated any provision of this subchapter or any rule or order or issued under this subchapter.

[1997, c. 155, Pt. A, §2 (NEW) .]

3. **Civil or criminal penalties.** Notwithstanding the issuance of a consent order, the administrator may seek civil or criminal penalties or compromise civil penalties concerning matters encompassed by the consent order, unless the consent order by its terms expressly precludes the administrator from doing so.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY
1997, c. 155, §A2 (NEW). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF).

§6124. CRIMINAL PENALTIES

1. **Willful violation.** A person who knowingly and willfully violates any provision of this subchapter for which a penalty is not specifically provided is guilty of a civil infraction.

[1997, c. 155, Pt. A, §2 (NEW) .]

2. **False statements.** A person who knowingly and willfully makes a material, false statement in any document filed or required to be filed under this subchapter with the intent to deceive the recipient of the document is guilty of a Class E crime.

[1997, c. 155, Pt. A, §2 (NEW) .]

3. **Unlicensed persons.** A person who knowingly and willfully engages in the business of money transmission without a license as provided in this subchapter is guilty of a Class E crime.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY
1997, c. 155, §A2 (NEW).

§6125. ADOPTION OF RULES

Rules adopted by the administrator pursuant to this subchapter are routine technical rules, pursuant to Title 5, chapter 375, subchapter II-A. [1997, c. 155, Pt. A, §2 (NEW).]

SECTION HISTORY
1997, c. 155, §A2 (NEW).

§6126. DESIGNATION OF AGENT FOR SERVICE OF PROCESS

An applicant shall designate and maintain an agent in this State for service of process. [1997, c. 155, Pt. A, §2 (NEW).]

SECTION HISTORY
1997, c. 155, §A2 (NEW).

§6127. MULTIPLE LICENSES

A person licensed under this subchapter is not required to obtain a separate license to engage in either the cashing of checks or the exchange of foreign currency in the State. [1997, c. 155, Pt. A, §2 (NEW).]

SECTION HISTORY
1997, c. 155, §A2 (NEW).

§6128. TREATMENT OF FEES

The aggregate of fees, examination expense reimbursements and other payments made under this subchapter is appropriated for the use of the administrator. Any balances of funds do not lapse but must be carried forward to be expended for the same purposes in the following fiscal year. [1997, c. 155, Pt. A, §2 (NEW).]

SECTION HISTORY
1997, c. 155, §A2 (NEW).

§6129. EFFECTIVE DATE

This subchapter is effective on January 1, 1998. Every person engaged in activities within this State encompassed by this subchapter at the time of the subchapter's adoption, except those persons already licensed under former section 891 in this State, shall file an application in accordance with the provisions of this subchapter within 3 months after the date this subchapter becomes effective. Those persons already licensed under former section 891 in this State must file an application for a renewal license pursuant to this subchapter within 3 months after the date this subchapter becomes effective. A person is not deemed to be in violation of this subchapter for operating without a license if the person files an application within the 3-month period, until the application is denied. [1997, c. 155, Pt. A, §2 (NEW).]

SECTION HISTORY
1997, c. 155, §A2 (NEW).

Subchapter 2: CHECK CASHING AND FOREIGN CURRENCY EXCHANGE HEADING: PL 1997, C. 155, PT. A, §2 (NEW)

§6131. SHORT TITLE

This subchapter may be known and cited as the "Check Cashing and Foreign Currency Exchange Act." [1997, c. 155, Pt. A, §2 (NEW).]

SECTION HISTORY
1997, c. 155, §A2 (NEW).

§6132. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1997, c. 155, Pt. A, §2 (NEW).]

1. **Administrator.** "Administrator" means the Superintendent of Consumer Credit Protection.

[1997, c. 155, Pt. A, §2 (NEW); 2007, c. 273, Pt. B, §6 (REV); 2007, c. 695, Pt. A, §47 (AFF) .]

2. **Applicant.** "Applicant" means a person filing an application for a license under this subchapter.

[1997, c. 155, Pt. A, §2 (NEW) .]

3. **Capital adequacy.** "Capital adequacy" means that an applicant is financially sound and has liquid assets useable in the business of at least $10,000, computed according to generally accepted accounting principles, for the full term of the registration.

[1997, c. 155, Pt. A, §2 (NEW) .]

4. **Check.** "Check" means any check, draft, money order or other instrument for the transmission or payment of money. "Check" does not include a travelers check.

[1997, c. 155, Pt. A, §2 (NEW) .]

5. **Check cashing business.** "Check cashing business" means any person who engages in the business of cashing checks for a fee. "Check cashing business" does not include any of the following:

A. A supervised financial organization; [1997, c. 155, Pt. A, §2 (NEW).]

B. A supervised lender; [1997, c. 155, Pt. A, §2 (NEW).]

C. A licensee under the Money Transmitters Act; or [1997, c. 155, Pt. A, §2 (NEW).]

D. A person who is primarily engaged in the business of selling tangible personal property or services at retail and does not derive more than 5% of its income from check cashing. [1997, c. 155, Pt. A, §2 (NEW).]

[1997, c. 155, Pt. A, §2 (NEW) .]

6. **Foreign currency exchange business.** "Foreign currency exchange business" means a person who engages in the business of exchanging foreign currency for a fee. "Foreign currency exchange business" does not include any of the following:

A. A supervised financial organization; [1997, c. 155, Pt. A, §2 (NEW).]

B. A licensee under the Money Transmitters Act; or [1997, c. 155, Pt. A, §2 (NEW).]

C. A person who is primarily engaged in the business of selling tangible personal property or services at retail and does not derive more than 5% of that person's income from foreign currency exchange. [1997, c. 155, Pt. A, §2 (NEW).]

[1997, c. 155, Pt. A, §2 (NEW) .]

7. **Identification.** "Identification" means, and is limited to, an unexpired and otherwise valid drivers license; a state identification card issued by any state of the United States or its territories or the District of Columbia showing a photograph and signature; a United States government resident alien identification card; a United States passport; or a United States military identification card.

[1997, c. 155, Pt. A, §2 (NEW) .]

8. **Person.** "Person" means an individual, partnership, association, joint-stock association, limited liability company, trust or corporation.

[1997, c. 155, Pt. A, §2 (NEW) .]

9. **Registrant.** "Registrant" means a person registered under this subchapter.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY
1997, c. 155, §A2 (NEW). 2007, c. 273, Pt. B, §7 (AFF). 2007, c. 273, Pt. B, §6 (REV). 2007, c. 695, Pt. A, §47 (AFF).

§6133. REGISTRATION REQUIRED

1. **Registration.** On or after January 1, 1998, a person except one exempt pursuant to section 6132, subsection 5 or 6, may not engage in the business of check cashing or foreign currency exchange without registering as provided in this subchapter.

[1997, c. 155, Pt. A, §2 (NEW) .]

2. **Additional locations.** A registrant may conduct its business in this State at one or more locations, directly or indirectly owned, or through one or more authorized delegates, subject to the additional requirements set forth in section 6137.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY
1997, c. 155, §A2 (NEW).

§6134. APPLICATION

An application for registration must be in writing and under oath to the administrator, in such form as the administrator may prescribe. The application must include the following information: [1997, c. 155, Pt. A, §2 (NEW).]

1. **Name and residence.** The legal name and residence and business addresses of the applicant, if the applicant is a natural person, or, if the applicant is a partnership, association, or corporation, the name of every partner, officer, or administrator of the applicant;

[1997, c. 155, Pt. A, §2 (NEW) .]

2. **Location.** The location of the principal office of the applicant;

[1997, c. 155, Pt. A, §2 (NEW) .]

3. **Other locations.** The complete address of any other locations at which the applicant proposes to engage in the activities regulated by this subchapter; and

[1997, c. 155, Pt. A, §2 (NEW) .]

4. **Other information.** Such other information as the administrator may reasonably require with respect to the applicant.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY
1997, c. 155, §A2 (NEW).

§6135. REGISTRATION STANDARDS

1. **Investigation.** Upon the filing of an application for registration, the administrator shall investigate the applicant with respect to:

A. The business records and the capital adequacy of the person seeking the registration; [1997, c. 155, Pt. A, §2 (NEW).]

B. The competence, experience, integrity and financial ability of any individual who:

(1) Is a director, officer or supervisory employee of the business; or

(2) Owns or controls the business; and [1997, c. 155, Pt. A, §2 (NEW).]

C. The record of the applicant or of any person referenced in paragraph B with respect to:

(1) Any criminal activity;

(2) Any fraud or other act of personal dishonesty;

(3) Any act, omission or practice that constitutes a breach of a fiduciary duty; or

(4) Any suspension or removal, by any agency or department of the United States or any state, from participation in the conduct of any federally or state-licensed or regulated business. [1997, c. 155, Pt. A, §2 (NEW).]

[1997, c. 155, Pt. A, §2 (NEW) .]

2. **Grounds for denial.** If the investigation under subsection 1 results in findings that the applicant is not properly qualified to conduct business under this subchapter, those findings are grounds for denial of the application.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY
1997, c. 155, §A2 (NEW).

§6136. REGISTRATION TERM; RENEWAL

1. **Effective registrations.** Registration pursuant to this subchapter remains effective through the remainder of the calendar year of its date of issuance, unless sooner surrendered, suspended or revoked.

[1997, c. 155, Pt. A, §2 (NEW) .]

2. **Annual renewal.** Registrations must be renewed annually, in such form as the administrator may prescribe.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY
1997, c. 155, §A2 (NEW).

§6137. FEES

The application and each renewal application must be filed with a nonrefundable fee of $250, together with a fee of $100 for each additional business location of the applicant. The aggregate of all fees, including those provided for by this section and in section 6140, is appropriated for the use of the administrator. Any balance of the funds does not lapse but must be carried forward to be expended for the same purposes in the following fiscal year. [1997, c. 155, Pt. A, §2 (NEW).]

SECTION HISTORY
1997, c. 155, §A2 (NEW).

§6138. LIMITATIONS

1. **Endorsement.** Before a registrant may deposit, with any financial institution, a payment instrument that is cashed by a registrant, the item must be endorsed with the actual name under which the registrant is doing business.

[1997, c. 155, Pt. A, §2 (NEW) .]

2. **Compliance with state and federal law.** Registrants must comply with all the laws of this State and any federal laws.

[1997, c. 155, Pt. A, §2 (NEW) .]

3. **Display of certificate of registration.** The administrator may require each check cashing business and foreign currency exchange business to display its registration certificate in its place of business.

[1997, c. 155, Pt. A, §2 (NEW) .]

4. **Prohibited activities.** A check cashing business may not:

A. Charge fees, except as otherwise provided by this subchapter, in excess of 5% of the face amount of the payment instrument, or 6% without the provision of identification, or $5, whichever is greater; [1997, c. 155, Pt. A, §2 (NEW).]

B. Charge fees in excess of 3% of the face amount of the payment instrument, or 4% without the provision of identification, or $5, whichever is greater, if the payment instrument is the payment of any kind of state public assistance or federal social security benefit payable to the bearer of the payment instrument; [1997, c. 155, Pt. A, §2 (NEW).]

C. Charge fees for personal checks or money orders in excess of 10% of the face amount of those payment instruments, or $5, whichever is greater; [1997, c. 155, Pt. A, §2 (NEW).]

D. Cash or advance any money on a postdated check; [1997, c. 155, Pt. A, §2 (NEW).]

E. Agree to hold a check or draft for later deposit; [1997, c. 155, Pt. A, §2 (NEW).]

F. Issue any check or draft without concurrently receiving the full principal amount in cash or its equivalent; or [1997, c. 155, Pt. A, §2 (NEW).]

G. Engage in any false or misleading advertising. [1997, c. 155, Pt. A, §2 (NEW).]

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY
1997, c. 155, §A2 (NEW).

§6139. RECORDS OF CHECK CASHING AND FOREIGN CURRENCY EXCHANGE BUSINESS

1. **Maintenance of records.** A registrant shall maintain all books, accounts, records and documents necessary to determine the registrant's compliance with the provisions of this subchapter. Books, accounts, records and documents must be retained for a period of at least 3 years.

[1997, c. 155, Pt. A, §2 (NEW) .]

2. **Location of records.** The records required to be maintained may be maintained by the registrant at any location, so long as the registrant notifies the administrator, in writing, of the location of the records in its application or otherwise. The registrant shall make such records available to the administrator for examination and investigation in this State within 7 days after receipt of a written request.

[1997, c. 155, Pt. A, §2 (NEW) .]

3. **Expiration of retention period.** Registrants and authorized vendors are not required to preserve or retain any of the records required by this section or copies of those records for a period longer than 3 years unless a longer period is expressly required by the laws of this State or any federal law. A registrant or authorized vendor may destroy any of its records or copies after the expiration of the retention period required by this section.

[1997, c. 155, Pt. A, §2 (NEW) .]

4. **Electronic storage.** The original of any record of a registrant includes the data or other information comprising a record stored or transmitted in or by means of any electronic, computerized, mechanized or other information storage or retrieval or transmission system or device that can upon request generate, regenerate or transmit the precise data or other information comprising the records. An original also includes the visible data or other information so generated, regenerated, or transmitted if it is legible or can be made legible by enlargement or other process.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY
1997, c. 155, §A2 (NEW).

§6140. EXAMINATIONS

1. **Examination.** The administrator may examine the books, accounts and records of an applicant or registrant and make investigations to determine compliance with this subchapter.

[1997, c. 155, Pt. A, §2 (NEW) .]

2. **Expenses.** The expenses of the administrator necessarily incurred in the examination or investigation of any applicant or registrant are chargeable to that person.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY
1997, c. 155, §A2 (NEW).

§6141. REPORTING REQUIREMENTS

A registrant under this subchapter shall: [1997, c. 155, Pt. A, §2 (NEW).]

1. **Disclose to administrator.** Disclose to the administrator the fees charged to consumers for services regulated by this subchapter; and

[1997, c. 155, Pt. A, §2 (NEW) .]

2. **Disclose to public.** Conspicuously disclose to the public, at each business location, the fees charged to consumers for its services.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY
1997, c. 155, §A2 (NEW).

§6142. SUSPENSION OR REVOCATION OF REGISTRATION

After notice and hearing, the administrator may suspend or revoke a registrant's registration if the administrator finds that: [1997, c. 155, Pt. A, §2 (NEW).]

1. **Grounds for denial.** A fact or condition exists that, if it had existed at the time when the registrant applied for its registration, would have been grounds for denying the application;

[1997, c. 155, Pt. A, §2 (NEW) .]

2. **Inadequate net worth.** The registrant's net worth becomes inadequate and the registrant, after 10 days' written notice from the administrator, fails to take such steps as the administrator determines necessary to remedy the deficiency;

[1997, c. 155, Pt. A, §2 (NEW) .]

3. **Violation.** The registrant knowingly violates a material provision of this subchapter or a rule or order validly adopted by the administrator under authority of this subchapter;

[1997, c. 155, Pt. A, §2 (NEW) .]

4. **Safety and soundness.** The registrant is conducting its business in an unsafe or unsound manner;

[1997, c. 155, Pt. A, §2 (NEW) .]

5. **Insolvency.** The registrant is insolvent;

[1997, c. 155, Pt. A, §2 (NEW) .]

6. **Failure to meet obligations.** The registrant has suspended payment of its obligations, made an assignment for the benefit of its creditors, or admitted in writing its inability to pay its debts as they become due;

[1997, c. 155, Pt. A, §2 (NEW) .]

7. **Bankruptcy.** The registrant has applied for an adjudication of bankruptcy, reorganization, arrangement or other relief under any bankruptcy;

[1997, c. 155, Pt. A, §2 (NEW) .]

8. **Refusal of examination.** The registrant refuses to permit the administrator to make an examination authorized by this subchapter;

[1997, c. 155, Pt. A, §2 (NEW) .]

9. **Failure to respond.** The registrant fails to promptly and adequately respond to communications from the administrator; or

[1997, c. 155, Pt. A, §2 (NEW) .]

10. **Failure to report.** The registrant willfully fails to make a report required by this subchapter.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY
1997, c. 155, §A2 (NEW).

§6143. PENALTIES

1. **Criminal penalty.** A person who carries on a business regulated by this subchapter without a valid registration is guilty of a Class E crime.

[1997, c. 155, Pt. A, §2 (NEW) .]

2. **Civil penalty.** A registrant who fails to comply with a provision of this subchapter is subject to a civil action in which a court may assess a penalty not to exceed $5,000 or actual damages, whichever is greater.

[1997, c. 155, Pt. A, §2 (NEW) .]

SECTION HISTORY
1997, c. 155, §A2 (NEW).

§6144. ADOPTION OF RULES

Rules adopted under this subchapter are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. [1997, c. 155, Pt. A, §2 (NEW).]

SECTION HISTORY
1997, c. 155, §A2 (NEW).

§6145. DESIGNATION OF AGENT FOR SERVICE OF PROCESS

An applicant must designate and maintain an agent in this State for service of process. [1997, c. 155, Pt. A, §2 (NEW).]

SECTION HISTORY
1997, c. 155, §A2 (NEW).

§6146. PRIVACY OF CONSUMER FINANCIAL INFORMATION

A check cashing business or foreign currency exchange business shall comply with the provisions of the federal Gramm-Leach-Bliley Act, 15 United States Code, Section 6801 et seq. (1999) and the applicable implementing federal Privacy of Consumer Information regulations, as adopted by the Office of the Comptroller of the Currency, 12 Code of Federal Regulations, Part 40 (2001); the Board of Governors of the Federal Reserve System, 12 Code of Federal Regulations, Part 216 (2001); the Federal Deposit Insurance Corporation, 12 Code of Federal Regulations, Part 332 (2001); the Office of Thrift Supervision, 12 Code of Federal Regulations, Part 573 (2001); the National Credit Union Administration, 12 Code of Federal Regulations, Part 716 (2001); the Federal Trade Commission, 16 Code of Federal Regulations, Part 313 (2001); or the Securities and Exchange Commission, 17 Code of Federal Regulations, Part 248 (2001), if the

check cashing business or foreign currency exchange business is a financial institution as defined in those regulations. This section is not intended to permit the release of health care information except as permitted by Title 22, section 1711-C or Title 24-A, chapter 24. [2001, c. 262, Pt. E, §2 (NEW).]

SECTION HISTORY
2001, c. 262, §E2 (NEW).

Subchapter 3: CASH-DISPENSING MACHINES ESTABLISHED BY NONBANKS HEADING: PL 1999, C. 229, §2 (NEW)

§6151. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1999, c. 229, §2 (NEW).]

1. **Administrator.** "Administrator" means the Superintendent of Consumer Credit Protection within the Department of Professional and Financial Regulation.

[1999, c. 229, §2 (NEW); 2007, c. 273, Pt. B, §6 (REV); 2007, c. 695, Pt. A, §47 (AFF) .]

2. **Cash-dispensing machine.** "Cash-dispensing machine" means an electronic device that, operating in conjunction with a processor and network, allows a customer to debit an account in exchange for dispensing cash and that may allow a customer to effectuate account transfers subject to the limitations of section 6152. It does not include a satellite facility operated by a financial institution or service corporation, a point-of-sale terminal or a consumer-owned and consumer-operated personal computer terminal.

[1999, c. 229, §2 (NEW) .]

3. **Establish.** "Establish" means to own, lease or otherwise legally control.

[1999, c. 229, §2 (NEW) .]

4. **Financial institution.** "Financial institution" means any financial institution as defined in Title 9-B, section 131, subsection 17; any credit union as defined in Title 9-B, section 131, subsection 12; or any bank, commercial bank, savings bank, trust company, building and loan association, savings and loan association, savings association, cooperative bank, credit union or similar banking or credit union organization chartered by any other state or by the Federal Government.

[1999, c. 229, §2 (NEW) .]

5. **Network.** "Network" means a person who engages primarily in the establishment and maintenance of a computer-operated system for transmitting items and messages between financial institutions, processors and cash-dispensing machines or similar electronic devices.

[1999, c. 229, §2 (NEW) .]

6. **Operator.** "Operator" means the person who owns, leases or otherwise legally controls a cash-dispensing machine and is responsible for registering the cash-dispensing machine.

[1999, c. 229, §2 (NEW) .]

7. **Person.** "Person" means an individual, partnership, corporation or other business association recognized under state law.

[1999, c. 229, §2 (NEW) .]

8. **Processor.** "Processor" means a person who electronically acquires financial data emanating from a cash-dispensing machine and relays that data to a network.

[1999, c. 229, §2 (NEW) .]

9. **Satellite facility.** "Satellite facility" means a satellite facility as defined in Title 9-B, section 131, subsection 35.

[1999, c. 229, §2 (NEW) .]

10. **Service corporation.** "Service corporation" means a service corporation, as defined in Title 9-B, section 131, subsection 37, owned by one or more financial institutions.

[1999, c. 229, §2 (NEW) .]

11. **Servicing agent.** "Servicing agent" means a person who contracts with an operator to provide customer relations, financial recordkeeping or similar services in regard to a cash-dispensing machine.

[1999, c. 229, §2 (NEW) .]

SECTION HISTORY
1999, c. 229, §2 (NEW). 2007, c. 273, Pt. B, §7 (AFF). 2007, c. 273, Pt. B, §6 (REV). 2007, c. 695, Pt. A, §47 (AFF).

§6152. ESTABLISHMENT OF CASH-DISPENSING MACHINES; LIMITATIONS

1. **Cash-dispensing machines.** A person may not establish or operate a cash-dispensing machine unless that person has first complied with the provisions of this subchapter.

[1999, c. 229, §2 (NEW) .]

2. **Limitations.** A cash-dispensing machine:

A. May not accept deposits or loan payments or effectuate account transfers other than those transfers between the customer's accounts in the same financial institution; and [1999, c. 229, §2 (NEW).]

B. Must be operated in such a way as to comply with the Electronic Funds Transfer Act, 15 United States Code, Section 1693 et seq. or regulations adopted under that Act. [1999, c. 229, §2 (NEW).]

[1999, c. 229, §2 (NEW) .]

SECTION HISTORY
1999, c. 229, §2 (NEW).

§6153. REGISTRATION

1. **Initial operation; notice.** Prior to the date of the initial operation of any cash-dispensing machine, the operator shall provide the following information to the administrator for the purpose of registering the cash-dispensing machine:

A. An initial notice that includes:

(1) The operator's name, address and telephone number;

(2) The name and address of where the cash-dispensing machine is to be located;

(3) The anticipated date of the initial operation of the cash-dispensing machine;

(4) The types of transactions available;

(5) The processor's name, address and telephone number;

(6) The servicing agent's name, address and telephone number;

(7) The name, title, address and telephone number of the person completing the notice; and

(8) Any other information required by the administrator; and [1999, c. 229, §2 (NEW).]

B. A registration fee of $50 for the first cash-dispensing machine location and $25 for each additional location, payable to the Treasurer of State. [1999, c. 229, §2 (NEW).]

[1999, c. 229, §2 (NEW) .]

2. **Annual notice; fee.** After filing an initial notice, as required by subsection 1, the operator shall provide annually, no later than January 31st, to the administrator a notice and registration fee in accordance with subsection 1, paragraphs A and B.

[1999, c. 229, §2 (NEW) .]

3. **Notification of change.** The operator shall promptly notify the administrator in writing:

A. Of any changes to the information required under subsection 1, paragraph A; or [1999, c. 229, §2 (NEW).]

B. If the operation of the cash-dispensing machine is terminated. [1999, c. 229, §2 (NEW).]

[1999, c. 229, §2 (NEW) .]

4. **Verification.** The administrator may, at any time, verify the completeness and accuracy of any required notice under this section.

[1999, c. 229, §2 (NEW) .]

5. **Violation; inadequate documentation.** The operator is in violation of this section if the operator fails to promptly provide adequate documentation to and upon request of the administrator or if the documentation is determined to be incomplete or inaccurate. The administrator shall inform the operator of any such failure or discrepancy under this subsection and shall inform the operator of the penalty established in accordance with subsection 6.

[1999, c. 229, §2 (NEW) .]

6. **Fine.** The administrator may impose a fine of $5 per day on any person failing to comply with the requirements of this section.

[1999, c. 229, §2 (NEW) .]

SECTION HISTORY
1999, c. 229, §2 (NEW).

§6154. REQUIRED DISCLOSURES TO CUSTOMERS

1. **Disclosure of pertinent information.** An operator shall clearly and conspicuously disclose on a sign posted on the cash-dispensing machine or in clear view of a customer viewing the cash-dispensing machine:

A. The name of the operator; [1999, c. 229, §2 (NEW).]

B. A disclaimer indicating that the operator is not a financial institution or a credit union; [1999, c. 229, §2 (NEW).]

C. The name, address and 24-hour toll-free telephone number where a customer may direct inquiries or complaints; [1999, c. 1, §45 (COR).]

D. A statement that the Bureau of Consumer Credit Protection is responsible for the operator's compliance with state law and the address and telephone number of the bureau; and [1999, c. 229, §2 (NEW); 2007, c. 273, Pt. B, §5 (REV); 2007, c. 695, Pt. A, §47 (AFF).]

E. That a fee may be assessed by the operator. [1999, c. 229, §2 (NEW).]

[1999, c. 1, §45 (COR); 2007, c. 273, Pt. B, §5 (REV); 2007, c. 695, Pt. A, §47 (AFF) .]

2. **Fees imposed.** Any operator may not charge a fee for use of a cash-dispensing machine unless the amount of the fee is clearly and conspicuously disclosed electronically during the course of the transaction in a manner that permits the customer to cancel the transaction without incurring the fee.

[1999, c. 229, §2 (NEW) .]

3. **Receipt for transaction.** A cash-dispensing machine must provide a receipt for the transaction that must include the following information in a clear and conspicuous manner:

A. The amount of the transaction; [1999, c. 229, §2 (NEW).]

B. The amount of any fee imposed by the operator; [1999, c. 229, §2 (NEW).]

C. The total amount debited to the customer's account, including any fee imposed by the operator; [1999, c. 229, §2 (NEW).]

D. The date and time of the transaction; [1999, c. 229, §2 (NEW).]

E. A number or code that identifies the customer and the account accessed; and [1999, c. 229, §2 (NEW).]

F. The location of the cash-dispensing machine. [1999, c. 229, §2 (NEW).]

[1999, c. 229, §2 (NEW) .]

SECTION HISTORY
RR 1999, c. 1, §45 (COR). 1999, c. 229, §2 (NEW). 2007, c. 273, Pt. B, §7 (AFF). 2007, c. 273, Pt. B, §5 (REV). 2007, c. 695, Pt. A, §47 (AFF).

§6155. EFFECTS OF VIOLATIONS ON RIGHTS OF PARTIES

1. **Violation of subchapter; unfair practices; civil penalty.** An operator that violates any provision of this subchapter or any rule adopted by the administrator or that through any unfair, unconscionable or deceptive practice causes actual damage to a customer, is subject to the following:

A. Examination and investigation pursuant to section 6156; [1999, c. 229, §2 (NEW).]

B. After notice and hearing, a cease and desist order from the administrator; [1999, c. 229, §2 (NEW).]

C. A civil action by the administrator through the Attorney General after which a court may assess a civil penalty of not more than $5,000; and [1999, c. 229, §2 (NEW).]

D. Revocation, suspension or nonrenewal of the operator's registration pursuant to section 6157. [1999, c. 229, §2 (NEW).]

[1999, c. 229, §2 (NEW) .]

2. **Penalty.** A person who establishes a cash-dispensing machine pursuant to this subchapter without having filed notice with the administrator is guilty of a Class E crime.

[1999, c. 229, §2 (NEW) .]

SECTION HISTORY
1999, c. 229, §2 (NEW).

§6156. EXAMINATION OF BOOKS, ACCOUNTS AND RECORDS

1. **Compliance.** The administrator may examine the cash-dispensing machines, books, accounts and records of an operator or servicing agent and make investigations to determine compliance with this subchapter.

[1999, c. 229, §2 (NEW) .]

2. **Chargeable expenses.** The expenses of the administrator incurred in the examination or investigation of any operator or servicing agent are chargeable to the operator required to file notice under this subchapter.

[1999, c. 229, §2 (NEW) .]

SECTION HISTORY
1999, c. 229, §2 (NEW).

§6157. SUSPENSION OR REVOCATION OF REGISTRATION

After notice and hearing, the administrator may suspend or revoke an operator's registration if the administrator finds that: [1999, c. 229, §2 (NEW).]

1. **Violation.** The operator knowingly violated a provision of this subchapter or a rule or order adopted by the administrator pursuant to this subchapter;

[1999, c. 229, §2 (NEW) .]

2. **Refusal to permit examination or pay exam fees.** The operator or servicing agent refused to permit the administrator to make an examination authorized by this subchapter or refused to reimburse the administrator for the expenses of an examination;

[1999, c. 229, §2 (NEW) .]

3. **Failure to respond.** The operator failed to promptly and adequately respond to requests from the administrator; or

[1999, c. 229, §2 (NEW) .]

4. **Failure to submit notice.** The operator willfully failed to submit a notice required by this subchapter.

[1999, c. 229, §2 (NEW) .]

SECTION HISTORY
1999, c. 229, §2 (NEW).

§6158. TREATMENT OF FEES

The aggregate of fees, examination expense reimbursement and other payments made pursuant to this subchapter are appropriated for the use of the administrator. Any balances of the funds do not lapse but must be carried forward to be expended for the same purposes in the following fiscal year. [1999, c. 229, §2 (NEW).]

SECTION HISTORY
1999, c. 229, §2 (NEW).

§6159. RULEMAKING

The administrator may adopt reasonable rules for the implementation and administration of this subchapter. Rules adopted pursuant to this subchapter are routine technical rules as defined in Title 5, chapter 375, subchapter II-A. [1999, c. 229, §2 (NEW).]

SECTION HISTORY
1999, c. 229, §2 (NEW).

§6160. EXCLUSIONS

This subchapter does not apply to any cash-dispensing machine established by a financial institution or service corporation. [1999, c. 229, §2 (NEW).]

SECTION HISTORY
1999, c. 229, §2 (NEW).

§6161. EFFECTIVE DATE

This subchapter takes effect January 31, 2000. [1999, c. 229, §2 (NEW).]

SECTION HISTORY
1999, c. 229, §2 (NEW).

§6162. PRIVACY OF CONSUMER FINANCIAL INFORMATION

A cash-dispensing machine operator shall comply with the provisions of the federal Gramm-Leach-Bliley Act, 15 United States Code, Section 6801 et seq. (1999) and the applicable implementing federal Privacy of Consumer Information regulations, as adopted by the Office of the Comptroller of the Currency, 12 Code of Federal Regulations, Part 40 (2001); the Board of Governors of the Federal Reserve System, 12 Code of Federal Regulations, Part 216 (2001); the Federal Deposit Insurance Corporation, 12 Code of Federal Regulations, Part 332 (2001); the Office of Thrift Supervision, 12 Code of Federal Regulations, Part 573 (2001); the National Credit Union Administration, 12 Code of Federal Regulations, Part 716 (2001); the Federal Trade Commission, 16 Code of Federal Regulations, Part 313 (2001); or the Securities and Exchange Commission, 17 Code of Federal Regulations, Part 248 (2001), if the cash-dispensing machine operator is a financial institution as defined in those regulations. This section is not intended to permit the release of health care information except as permitted by Title 22, section 1711-C or Title 24-A, chapter 24. [2001, c. 262, Pt. E, §3 (NEW).]

SECTION HISTORY
2001, c. 262, §E3 (NEW).

Chapter 80-A: DEBT MANAGEMENT SERVICES

§6171. SHORT TITLE

This chapter may be known and cited as the "Debt Management Services Act." [2007, c. 36, §1 (AMD).]

SECTION HISTORY
1999, c. 560, §3 (NEW). 2007, c. 36, §1 (AMD).

§6172. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1999, c. 560, §3 (NEW).]

1. **Administrator.** "Administrator" means the Superintendent of Consumer Credit Protection within the Department of Professional and Financial Regulation.

[1999, c. 560, §3 (NEW); 2007, c. 273, Pt. B, §6 (REV) .]

1-A. **Certified counselor.** "Certified counselor" means an individual certified by a training program or organization approved by the administrator that authenticates the competence of the individual providing education and assistance to consumers in connection with debt management services.

[2007, c. 36, §2 (NEW) .]

1-B. **Consumer education program.** "Consumer education program" means a program or plan that seeks to improve the financial literacy of consumers.

[2007, c. 36, §3 (NEW) .]

1-C. **Consumer's obligation.** "Consumer's obligation" means a debt or debts incurred for personal, family or household purposes and does not include a debt or debts incurred for business or commercial purposes.

[2007, c. 36, §4 (NEW) .]

2. **Debt management service.** "Debt management service" means:

A. The receiving of money from a consumer for the purpose of distributing one or more payments to or among one or more creditors of the consumer in full or partial payment of the consumer's obligation; [2003, c. 172, §1 (NEW).]

B. Arranging or assisting a consumer to arrange for the distribution of one or more payments to or among one or more creditors of the consumer in full or partial payment of the consumer's obligation; [2003, c. 172, §1 (NEW).]

C. Exercising control, directly or indirectly, or arranging for the exercise of control over funds of a consumer for the purpose of distributing payments to or among one or more creditors of the consumer in full or partial payment of the consumer's obligation; or [2003, c. 172, §1 (NEW).]

D. Acting or offering to act as an intermediary between a consumer and one or more creditors of the consumer for the purpose of adjusting, settling, discharging, reaching a compromise on or otherwise altering the terms of payment of the consumer's obligation. [2003, c. 172, §1 (NEW).]

[2003, c. 172, §1 (RPR) .]

3. **Debt management service provider.** "Debt management service provider" means a person, wherever located, that provides or offers to provide to a consumer in this State any debt management services, in return for a fee or other consideration, and a person located in this State that provides or offers to provide to a consumer who is not a resident of this State any debt management services, in return for a fee or other consideration. "Debt management service provider" does not include:

A. A supervised financial organization; [1999, c. 560, §3 (NEW).]

B. A supervised lender; or [1999, c. 560, §3 (NEW).]

C. A person admitted to the practice of law in this State as of the effective date of this chapter, except to the extent that debt management services constitute the exclusive activity of that attorney. [1999, c. 560, §3 (NEW).]

[2007, c. 36, §5 (AMD) .]

4. **Person.** "Person" means an individual or an organization.

[1999, c. 560, §3 (NEW) .]

5. **Supervised financial organization.** "Supervised financial organization" has the same meaning as in Title 9-A, section 1-301, subsection 38-A.

[1999, c. 560, §3 (NEW) .]

6. **Supervised lender.** "Supervised lender" has the same meaning as defined in Title 9-A, section 1-301, subsection 39.

[1999, c. 560, §3 (NEW) .]

SECTION HISTORY
1999, c. 560, §3 (NEW). 2003, c. 172, §1 (AMD). 2007, c. 36, § §2-5 (AMD). 2007, c. 273, Pt. B, §6 (REV).

§6173. REGISTRATION AND ANNUAL REREGISTRATION

1. **Nonprofit organizations.**

[2007, c. 36, §6 (RP) .]

2. **Registration and reregistration.** An organization desiring to act, or continue to act, as a debt management service provider shall apply to the administrator for registration or reregistration in accordance with this chapter. The application must be in a form prescribed by the administrator. The administrator may refuse the application if it contains erroneous or incomplete information. A registration may not be issued unless the administrator, upon investigation, finds that the financial soundness and responsibility, insurance coverage, consumer education programs and services component, character and fitness of the applicant and, when applicable, its partners, officers or directors, warrant belief that the business will be operated honestly and fairly within the purposes of this chapter. The initial application for registration may be filed at any time and must include a fee of $500. A registration or reregistration under this chapter expires on December 31st of the year approved. An annual reregistration application must be filed by December 1st of each year for the following year and must include a fee of $250.

[2007, c. 36, §7 (AMD) .]

2-A. **Separate registration required.** A separate registration is required for each place of business. An application fee of $250 must accompany an application for registration for a place of business other than that of the first registered location of the registrant.

[2009, c. 243, §4 (NEW) .]

3. **Action on registration application.** The administrator shall take action on an application within 30 days after the administrator has accepted the application as complete. Upon written request, the applicant is entitled to a hearing on the question of the applicant's qualifications for registration if the administrator has notified the applicant in writing that the application has been denied or the administrator has not issued a registration within 30 days after the application for the registration was accepted as complete by the administrator. A request for a hearing may not be made more than 60 days after the application was accepted as complete or the administrator has mailed a written notice to the applicant stating that the application has been denied and stating the reasons for the denial of the application.

[1999, c. 560, §3 (NEW) .]

SECTION HISTORY
1999, c. 560, §3 (NEW). 2007, c. 36, §§6, 7 (AMD). 2009, c. 243, §4 (AMD).

§6174. BOND REQUIRED

Each application must be accompanied by evidence of a surety bond in a form approved by the administrator in the aggregate amount of $50,000 to run to the administrator for use by the administrator and any person or persons who may have a cause of action against a debt management service provider. The terms of the bond must run concurrently with the period of time during which the registration is in effect. [1999, c. 560, §3 (NEW).]

SECTION HISTORY
1999, c. 560, §3 (NEW).

§6174-A. LIMITS ON FEES AND CHARGES

1. **Initial fee.** A debt management service provider may charge to a consumer a reasonable one-time initial or set-up fee in an amount not to exceed $75.

[2007, c. 36, §8 (NEW) .]

2. **Service fees.** In addition to the fee set forth in subsection 1, a debt management service provider may assess either of the following fees:

A. For a debt management service provider that distributes monthly payments to a consumer's creditor or creditors, a reasonable monthly fee not to exceed $40; or [2007, c. 36, §8 (NEW).]

B. For a debt management service provider that acts or offers to act as an intermediary between a consumer and one or more creditors of the consumer for the purpose of adjusting, settling, discharging, reaching a compromise on or otherwise altering the terms of payment of the consumer's obligation, a reasonable fee not to exceed 15% of the amount by which the consumer's debt is reduced as part of each settlement. [2007, c. 36, §8 (NEW).]

[2007, c. 36, §8 (NEW) .]

3. **Limitation on excess fees.** A debt management service provider may not charge more than one fee authorized under subsections 1 and 2 on the basis that the consumer has entered into a debt management services agreement for joint obligations of a consumer and a consumer's spouse or other member of the consumer's household.

[2007, c. 36, §8 (NEW) .]

4. **Application.** This section does not apply to a debt management service provider located in this State that does not provide debt management services to a consumer who is a resident of this State.

[2007, c. 36, §8 (NEW) .]

SECTION HISTORY
2007, c. 36, §8 (NEW).

§6174-B. COUNSELOR CERTIFICATION; CONSUMER EDUCATION PROGRAM

1. **Certified counselor.** A debt management service provider shall provide evidence to the administrator within 12 months after initial employment of a counselor that the counselor is a certified counselor.

[2007, c. 36, §9 (NEW) .]

2. **Consumer education.** A debt management service provider shall offer a consumer education program approved by the administrator. Providers of consumer education programs shall submit each such program to the administrator for approval, and each such submission must be accompanied by a $100 fee. A debt management service provider may charge consumers a reasonable fee for the program not to exceed $50.

[2009, c. 243, §5 (AMD) .]

3. **Application.** This section does not apply to a debt management service provider located in this State that does not provide debt management services to a consumer who is a resident of this State.

[2007, c. 36, §9 (NEW) .]

SECTION HISTORY
2007, c. 36, §9 (NEW). 2009, c. 243, §5 (AMD).

§6175. HANDLING OF CONSUMER FUNDS

1. **Funds deposited in trust account.** The debt management service provider shall deposit, within 2 business days of receipt, all funds received from or on behalf of a consumer for payment to a creditor or creditors in a federally insured trust account for the benefit of the consumer in a supervised financial organization. Any trust account established to receive consumer funds is free from trustee process and unavailable to creditors of the debt management service provider.

[1999, c. 560, §3 (NEW) .]

2. **Requirements for handling of funds.** The debt management service provider shall:

A. Maintain separate records of account for each consumer receiving debt management services; [1999, c. 560, §3 (NEW).]

B. Remit funds received from or on behalf of a consumer to the consumer's creditor or creditors within 15 business days of receipt of the funds; and [1999, c. 560, §3 (NEW).]

C. Correct or remedy any misdirected payments resulting from an error by the debt management service provider and reimburse the consumer for any actual costs or fees imposed by a creditor as a result of such misdirection. [1999, c. 560, §3 (NEW).]

[1999, c. 560, §3 (NEW) .]

3. **Commingling of funds.** The debt management service provider may not commingle trust accounts established for the benefit of consumers with any operating accounts of the debt management service provider.

[1999, c. 560, §3 (NEW) .]

SECTION HISTORY
1999, c. 560, §3 (NEW).

§6176. REQUIREMENT FOR WRITTEN AGREEMENT

1. **Written agreement.** A debt management service provider may not perform debt management services for a consumer unless the consumer and the debt management service provider have first executed a written agreement with regard to the debt management services to be provided. A copy of the completed agreement must be given to the consumer.

[1999, c. 560, §3 (NEW) .]

2. **Required provisions.** Each agreement between a consumer and a debt management service provider must be dated and signed by the consumer and must include the following:

A. The name and address of the consumer and the debt management service provider and the state registration number of the debt management service provider; [1999, c. 560, §3 (NEW).]

B. A full description of the services to be performed for the consumer, any fees to be charged to the consumer for such services and any contributions, fees or charges the consumer has agreed to make or pay to the debt management service provider in accordance with the limitation on fees provided in section 6174-A; [2007, c. 36, §10 (AMD).]

C. Disclosure of the existence of the surety bond on file with the State pursuant to section 6174 and a notice that the consumer may contact the Bureau of Consumer Credit Protection with any questions or complaints regarding the debt management service provider; [1999, c. 560, §3 (NEW); 2007, c. 273, Pt. B, §5 (REV); 2007, c. 695, Pt. A, §47 (AFF).]

D. The identification of the supervised financial organization where funds remitted by a consumer for payment to one or more creditors will be held; [1999, c. 560, §3 (NEW).]

E. The right of a party to cancel the agreement by providing a written notice of cancellation to the other party; [1999, c. 560, §3 (NEW).]

F. A complete list of the consumer's obligations that are subject to the agreement and the names and addresses of the creditors holding those obligations and a disclosure of whether or not the consumer's obligations are individual obligations of the consumer alone or joint obligations of the consumer and a spouse or other member of the consumer's household; [2007, c. 36, §11 (AMD).]

G. A full description and schedule of the periodic amounts to be remitted to the debt management service provider for payment to the consumer's creditor or creditors and the amounts to be remitted to each creditor; [1999, c. 560, §3 (NEW).]

H. A notice to the consumer that by executing the agreement the consumer authorizes the supervised financial organization to disclose financial records relating to the trust account in which the consumer's funds are held pursuant to section 6175 to the administrator during the course of any examination of the debt management service provider by the administrator; and [1999, c. 560, §3 (NEW).]

I. The following notice:

NOTICE TO CONSUMER: Do not sign this agreement before you read it. You must be given a copy of this agreement. [1999, c. 560, §3 (NEW).]

[2007, c. 36, §§10, 11 (AMD); 2007, c. 273, Pt. B, §5 (REV); 2007, c. 695, Pt. A, §47 (AFF) .]

SECTION HISTORY
1999, c. 560, §3 (NEW). 2007, c. 36, §§10, 11 (AMD). 2007, c. 273, Pt. B, §7 (AFF). 2007, c. 273, Pt. B, §5 (REV). 2007, c. 695, Pt. A, §47 (AFF).

§6177. REPORTS AND RECORDS

1. **Written reports to consumers.** A debt management service provider shall provide to each consumer receiving debt management services periodic written reports accounting for funds received from the consumer for payment to the consumer's creditor or creditors whose obligations are listed in the consumer's agreement with the debt management service provider and disbursements made to each such creditor on the consumer's behalf since the last report. The debt management service provider shall provide such reports to the consumer not less than once each calendar quarter.

[1999, c. 560, §3 (NEW) .]

2. **Maintenance of records.** A debt management service provider shall maintain books and records for each consumer for whom it provides debt management services for 6 years following the final transaction with the consumer.

[1999, c. 560, §3 (NEW) .]

SECTION HISTORY
1999, c. 560, §3 (NEW).

§6178. POWERS AND FUNCTIONS OF ADMINISTRATOR

The administrator may exercise the following powers and functions. [1999, c. 560, §3 (NEW).]

1. **Complaint investigation.** The administrator may receive and act on complaints, take action to obtain voluntary compliance with this chapter or refer cases, including cases involving violations under section 6173 or 6175 or Title 17, section 701, to the Attorney General, who shall appear for and represent the administrator in court.

[1999, c. 560, §3 (NEW) .]

2. **Rules.** The administrator may adopt rules to carry out the requirements of this chapter in accordance with Title 5, chapter 375. Rules adopted pursuant to this chapter are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A.

[1999, c. 560, §3 (NEW) .]

3. **Examinations.** The administrator may examine the books, accounts and records of any debt management service provider, make an investigation to determine compliance with this chapter and charge the reasonable expenses necessarily incurred to conduct the examinations to the debt management service provider.

[1999, c. 560, §3 (NEW) .]

4. **Appropriation of funds.** The administrator may appropriate for the use of the administrator the aggregate of fees, examination expense reimbursement or other payments made to the administrator pursuant to this chapter and carry forward any balance of funds from a fiscal year to be expended for the same purpose in the following fiscal year.

[1999, c. 560, §3 (NEW) .]

SECTION HISTORY
1999, c. 560, §3 (NEW).

§6179. PROHIBITED ACTS

A debt management service provider may not: [1999, c. 560, §3 (NEW).]

1. **Purchase debt.** Purchase any debt or obligation of a consumer;

[1999, c. 560, §3 (NEW) .]

2. **Lend money.** Lend money or provide credit to any consumer;

[1999, c. 560, §3 (NEW) .]

3. **Mortgage interest** . Obtain a mortgage or other security interest in property of a consumer;

[1999, c. 560, §3 (NEW) .]

4. **Debt collector.** Operate as a debt collector in this State, as defined in section 11002, subsection 6; or

[1999, c. 560, §3 (NEW) .]

5. **Negative amortization.** Structure an agreement for the consumer that, at the conclusion of the projected term for the consumer's participation in the debt management service agreement, would result in negative amortization of any of the consumer's obligations to creditors.

[1999, c. 560, §3 (NEW) .]

SECTION HISTORY
1999, c. 560, §3 (NEW).

§6180. ADVERTISING

1. **False advertising.** A debt management service provider may not engage in this State in false or misleading advertising concerning the terms and conditions of any services or assistance offered.

[1999, c. 560, §3 (NEW) .]

2. **Dissemination; no liability.** This section does not impose liability on the owner or personnel of any medium in which an advertisement appears or through which an advertisement is disseminated.

[1999, c. 560, §3 (NEW) .]

SECTION HISTORY
1999, c. 560, §3 (NEW).

§6181. EFFECTS OF VIOLATIONS ON RIGHTS OF PARTIES

1. **Violations; unfair, unconscionable or deceptive practices.** A debt management service provider that violates any provision of this chapter or any rule adopted by the administrator or that through any unfair, unconscionable or deceptive practice causes actual damage to a consumer is subject to enforcement action pursuant to subsection 2.

[1999, c. 560, §3 (NEW) .]

2. **Enforcement actions.** The following enforcement actions may be taken by the administrator or an aggrieved consumer against a debt management service provider for violations of any provision of this chapter or any rule adopted pursuant to this chapter or for unfair, unconscionable or deceptive practices that cause actual damage to a consumer:

A. After notice and hearing, a cease and desist order from the administrator; [1999, c. 560, §3 (NEW).]

B. When in the opinion of the administrator immediate action is required to protect the public interest, a cease and desist order without prior notice and hearing after which the administrator shall afford an opportunity for a hearing, the results of which are subject to review under Title 5, chapter 375, subchapter VII; [1999, c. 560, §3 (NEW).]

C. After notice and hearing, forfeiture of such portion of the required bond as proportionately may make aggrieved parties whole; [1999, c. 560, §3 (NEW).]

D. A civil action by the administrator through the Attorney General, after which a court may assess a civil penalty payable to the State of not more than $5,000; [1999, c. 560, §3 (NEW).]

E. A civil action by an aggrieved consumer in which that consumer has the right to recover actual damages from the debt management service provider in an amount determined by the court plus costs of the action together with reasonable attorney's fees; or [1999, c. 560, §3 (NEW).]

F. Revocation, suspension or nonrenewal of the debt management service provider's registration pursuant to section 6182. [1999, c. 560, §3 (NEW).]

[1999, c. 560, §3 (NEW) .]

SECTION HISTORY
1999, c. 560, §3 (NEW).

§6182. SUSPENSION OR REVOCATION OF REGISTRATION

1. **Suspension or revocation.** After notice and hearing, the administrator may suspend or revoke a debt management service provider's registration if the administrator finds that one of the conditions of subsection 2 is met.

[1999, c. 560, §3 (NEW) .]

2. **Conditions for suspension or revocation.** The following conditions are grounds for suspension or revocation of a registration:

A. A fact or condition exists that, if it had existed at the time when the registrant applied for registration, would have been grounds for denying the application; [1999, c. 560, §3 (NEW).]

B. The registrant knowingly violates a material provision of this chapter or rule or order validly adopted by the administrator under authority of this chapter; [1999, c. 560, §3 (NEW).]

C. The registrant is insolvent; [1999, c. 560, §3 (NEW).]

D. The registrant refuses to permit the administrator to make an examination authorized by this chapter; or [1999, c. 560, §3 (NEW).]

E. The registrant fails to respond within a reasonable time and in an appropriate manner to communications from the administrator. [1999, c. 560, §3 (NEW).]

[1999, c. 560, §3 (NEW) .]

SECTION HISTORY
1999, c. 560, §3 (NEW).

§6183. DEBT MANAGEMENT SERVICES RELATED TO RESIDENTIAL MORTGAGE LOANS

A person that engages in debt management services as described in section 6172, subsection 2, paragraph D related to a consumer's residential mortgage loan shall comply with the requirements of this chapter governing debt management service providers, subject to the following conditions and provisions. [2009, c. 327, §1 (NEW); 2009, c. 327, §2 (AFF).]

1. **Good faith and fair dealing.** A person subject to this section shall act in good faith and with fair dealing in any transaction, practice or course of business in connection with the providing of debt management services.

[2009, c. 327, §1 (NEW); 2009, c. 327, §2 (AFF) .]

2. **Training.** With respect to section 6174-B, training leading to certification of the counselor must relate to subject matter specific to such activity, including but not limited to the tax consequences to the consumer of forgiven debt, the consumer's options for discharge of debt, including but not limited to the availability of bankruptcy, and all other options available to the consumer. The consumer education program must also include information about the tax consequences of forgiven debt.

[2009, c. 327, §1 (NEW); 2009, c. 327, §2 (AFF) .]

3. **Written reports.** With respect to section 6177, subsection 1, the periodic written reports must consist of written updates provided to the consumer on at least a quarterly basis as well as a final accounting provided to the consumer.

[2009, c. 327, §1 (NEW); 2009, c. 327, §2 (AFF) .]

4. **Exceptions.** Section 6179, subsections 1 and 3 do not apply to the provisions of this section.

[2009, c. 327, §1 (NEW); 2009, c. 327, §2 (AFF) .]

5. **Disclosure.** If the service to be provided to the consumer includes the sale or transfer of an interest in real property:

A. The consumer's right to cancel the agreement by providing a written notice of cancellation to the other party pursuant to section 6176, subsection 2, paragraph E is effective only until the date of consummation of the transfer; [2009, c. 327, §1 (NEW); 2009, c. 327, §2 (AFF).]

B. The debt management service provider must provide the consumer with the names and contact information for 3rd-party housing counselors approved by the United States Department of Housing and Urban Development; and [2009, c. 327, §1 (NEW); 2009, c. 327, §2 (AFF).]

C. The debt management service provider must specifically advise the consumer in writing whether the consumer will be liable for a deficiency or not liable for a deficiency resulting from the sale or transfer. [2009, c. 327, §1 (NEW); 2009, c. 327, §2 (AFF).]

[2009, c. 327, §1 (NEW); 2009, c. 327, §2 (AFF) .]

6. **Damages.** In addition to any other remedies available to the consumer, a consumer has a right to recover consequential damages from the debt management service provider for a violation of this section.

[2009, c. 327, §1 (NEW); 2009, c. 327, §2 (AFF) .]

SECTION HISTORY
2009, c. 327, §1 (NEW). 2009, c. 327, §2 (AFF).

Chapter 80-B: FORECLOSURE PURCHASERS

§6191. SHORT TITLE

This chapter may be known and cited as "the Foreclosure Purchasers Act." [2007, c. 596, §1 (NEW).]

SECTION HISTORY
2007, c. 596, §1 (NEW).

§6192. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2007, c. 596, §1 (NEW).]

1. **Administrator.** "Administrator" means the Superintendent of Consumer Credit Protection within the Department of Professional and Financial Regulation, except that "administrator" means the Superintendent of Financial Institutions with regard to a supervised financial organization as defined in Title 9-A, section 1-301, subsection 38-A.

[2007, c. 596, §1 (NEW) .]

2. **Bona fide purchaser.** "Bona fide purchaser" means any person acting in good faith who:

A. Purchases property from a foreclosure purchaser for consideration or makes a mortgage loan to a foreclosure purchaser or a subsequent bona fide purchaser as long as the person had no notice of:

(1) The foreclosed homeowner's continuing right to possess the property;

(2) The foreclosed homeowner's continuing legal or equitable interest in the property, including, but not limited to, the right to repurchase, or of any facts that may create an equitable mortgage; or

(3) Any violations of this chapter; [2007, c. 596, §1 (NEW).]

B. Purchases property at a foreclosure sale; or [2007, c. 596, §1 (NEW).]

C. Accepts a deed in lieu of foreclosure. [2007, c. 596, §1 (NEW).]

[2007, c. 596, §1 (NEW) .]

3. **Consideration.** "Consideration" means any payment or thing of value provided to the foreclosed homeowner, including payment of or forgiveness of unpaid rent or contract for deed, land installment contract or bond for deed payments owed by the foreclosed homeowner prior to the date of eviction or voluntary relinquishment of the property, reasonable costs paid to 3rd parties necessary to complete the foreclosure reconveyance transaction, payment of money to satisfy a debt or legal obligation of the foreclosed homeowner or the reasonable cost of repairs for damage to the dwelling caused by the foreclosed homeowner. "Consideration" does not include amounts imputed as a down payment or fee to the foreclosure purchaser or a person acting in participation with the foreclosure purchaser incident to a contract for deed, land installment contract, bond for deed, lease or option to purchase entered into as part of the foreclosure reconveyance, except for reasonable costs paid to 3rd parties necessary to complete the foreclosure reconveyance.

[2007, c. 596, §1 (NEW) .]

4. **Foreclosed homeowner.** "Foreclosed homeowner" means an owner of residential real property, including a condominium, that is the primary residence of the owner and whose mortgage on the real property is or was in foreclosure.

[2007, c. 596, §1 (NEW) .]

5. **Foreclosure purchaser.** "Foreclosure purchaser" means a person acting as the acquirer in a foreclosure reconveyance. "Foreclosure purchaser" also includes a person acting in a joint venture or joint enterprise with one or more acquirers in a foreclosure reconveyance. "Foreclosure purchaser" does not include:

A. A bona fide purchaser; or [2007, c. 596, §1 (NEW).]

B. A natural person who is not in the business of foreclosure purchasing and has a prior personal relationship with the foreclosed homeowner. [2007, c. 596, §1 (NEW).]

[2007, c. 596, §1 (NEW) .]

6. **Foreclosure reconveyance.** "Foreclosure reconveyance" means a transaction involving:

A. The transfer of title to a residence in foreclosure, either by transfer of interest from the foreclosed homeowner or by creation of a mortgage or other lien or encumbrance during the foreclosure process that allows the acquirer to obtain title to the property by redeeming the property as a junior lienholder; and [2007, c. 596, §1 (NEW).]

B. The subsequent conveyance, or promise of a subsequent conveyance, of an interest back to the foreclosed homeowner by the acquirer or a person acting in participation with the acquirer that allows the foreclosed homeowner to possess either the residence in foreclosure or other real property. For the purposes of this paragraph, "interest" includes, but is not limited to, an interest in a contract for deed, a land installment contract, a bond for deed, a purchase agreement, an option to purchase or a lease. [2007, c. 596, §1 (NEW).]

"Foreclosure reconveyance" does not include a supervised loan subject to Title 9-A, Article 8-A or the federal Truth in Lending Act made by a supervised lender or supervised financial organization to refinance any existing mortgage.

[2011, c. 427, Pt. D, §20 (AMD) .]

7. **Resale.** "Resale" means a bona fide market sale of a property subject to a foreclosure reconveyance by a foreclosure purchaser to an unaffiliated 3rd party.

[2007, c. 596, §1 (NEW) .]

8. **Resale price.** "Resale price" means the gross sale price of a property upon resale.

[2007, c. 596, §1 (NEW) .]

9. **Residence in foreclosure.** "Residence in foreclosure" means residential real property consisting of one- to 4-family dwelling units, one of which the owner occupies as the owner's principal place of residence, when there is a delinquency or default on any loan payment or debt secured by or attached to the residential real property, including, but not limited to, a contract for deed, land installment contract or bond for deed, land installment contract or bond for deed payments.

[2007, c. 596, §1 (NEW) .]

SECTION HISTORY
2007, c. 596, §1 (NEW). 2011, c. 427, Pt. D, §20 (AMD).

§6193. LICENSE REQUIRED

A foreclosure purchaser may not engage in the business of foreclosure purchasing in this State without first obtaining a license from the administrator, except that a supervised financial organization as defined in Title 9-A, section 1-301, subsection 38-A is not required to be licensed. The requirements for obtaining a license under this chapter must be substantially similar to the requirements for a supervised lender license as provided in Title 9-A, section 2-301. [2007, c. 596, §1 (NEW).]

SECTION HISTORY
2007, c. 596, §1 (NEW).

§6194. CONTRACT REQUIREMENTS

1. **Written contract required.** A foreclosure purchaser shall enter into a foreclosure reconveyance in the form of a written contract. The contract must be written in at least 12-point boldface type in the same language principally used by the foreclosure purchaser and foreclosed homeowner to negotiate the sale of the residence in foreclosure and must be fully completed and signed and dated by the foreclosed homeowner and foreclosure purchaser before the execution of any instrument of conveyance of the residence in foreclosure.

[2007, c. 596, §1 (NEW) .]

2. **Contract terms.** A contract required by this section must contain the entire agreement of the parties and must include:

A. The name, business address and telephone number of the foreclosure purchaser; [2007, c. 596, §1 (NEW).]

B. The address of the residence in foreclosure; [2007, c. 596, §1 (NEW).]

C. The total consideration to be given by the foreclosure purchaser in connection with or incident to the sale; [2007, c. 596, §1 (NEW).]

D. A complete description of the terms of payment or other consideration, including, but not limited to, any services of any nature that the foreclosure purchaser will perform for the foreclosed homeowner before or after the sale; [2007, c. 596, §1 (NEW).]

E. The time at which possession is to be transferred to the foreclosure purchaser; [2007, c. 596, §1 (NEW).]

F. A complete description of the terms of any related agreement designed to allow the foreclosed homeowner to remain in the home, such as a rental agreement, repurchase agreement, contract for deed, land installment contract or bond for deed or lease with option to buy; [2007, c. 596, §1 (NEW).]

G. A notice of cancellation as provided in section 6195, subsection 3; [2007, c. 596, §1 (NEW).]

H. The following notice in at least 14-point boldface type, if the contract is printed, or in capital letters, if the contract is typed:

"NOTICE REQUIRED BY MAINE LAW

YOU ARE TRANSFERRING TITLE TO YOUR HOUSE. IF YOU DO NOT FULFILL ALL OF THE TERMS OF THIS CONTRACT, YOU WILL LOSE OWNERSHIP AND POSSESSION OF YOUR HOUSE."; and

[2007, c. 596, §1 (NEW).]

I. The following notice in at least 14-point boldface type, if the contract is printed, or in capital letters, if the contract is typed, and completed with the name of the foreclosure purchaser, immediately above the statement required by section 6195, subsection 2:

"NOTICE REQUIRED BY MAINE LAW

Until your right to cancel this contract has ended, ... (Name) or anyone working for ..... (Name) CANNOT ask you to sign or have you sign any deed or any other document."

[2007, c. 596, §1 (NEW).]

[2007, c. 596, §1 (NEW) .]

3. **Effect of contract.** The contract required by this section survives delivery of any instrument of conveyance of the residence in foreclosure and has no effect on persons other than the parties to the contract.

[2007, c. 596, §1 (NEW) .]

4. **Advance disclosure of contract.** The contract required by this section must be given to the foreclosed homeowner at least 3 business days prior to the consummation of the foreclosure reconveyance.

[2007, c. 596, §1 (NEW) .]

5. **Filing with register of deeds.** The foreclosure purchaser shall file a memorandum of the contract required by this section with the register of deeds in the county in which the residence in foreclosure is located.

[2007, c. 596, §1 (NEW) .]

SECTION HISTORY
2007, c. 596, §1 (NEW).

§6195. CANCELLATION

1. **Cancellation.** In addition to any other right of rescission, a foreclosed homeowner has the right to cancel a contract with a foreclosure purchaser until midnight of the 5th business day following the day on which the foreclosed homeowner signs a contract that complies with this chapter or until 8:00 a.m. on the last day of the period during which the foreclosed homeowner has a right of redemption, whichever occurs first. Cancellation occurs when the foreclosed homeowner delivers, by any means, written notice of cancellation to the address provided in subsection 3. If cancellation is mailed, delivery is effective upon mailing. If sent via e-mail, delivery is effective upon transmission. A notice of cancellation given by the foreclosed homeowner need not take the particular form as specified in the contract. Within 10 days following receipt of a notice of cancellation given in accordance with this section, the foreclosure purchaser shall return without condition any original contract and any other documents signed by the foreclosed homeowner.

[2007, c. 596, §1 (NEW) .]

2. **Notice of cancellation in contract.** A contract must contain in the space reserved for the foreclosed homeowner's signature a conspicuous statement in at least 14-point boldface type, if the contract is printed, or in capital letters, if the contract is typed, as follows:

"NOTICE REQUIRED BY MAINE LAW

"You may cancel this contract for the sale of your house without any penalty or obligation at any time before ..... (Date and time of day)

See the attached notice of cancellation form for an explanation of this right."

The foreclosure purchaser shall accurately enter the date and time of day on which the cancellation right ends.

[2007, c. 596, §1 (NEW) .]

3. **Separate notice of cancellation.** The foreclosure purchaser shall provide the foreclosed homeowner with a copy of the contract and the attached notice of cancellation at the time the contract is executed by all parties. The contract must be accompanied by a completed form in duplicate, captioned "notice of cancellation" in 14-point boldface type, if the contract is printed, or in capital letters, if the contract is typed, followed by a space in which the foreclosure purchaser shall enter the date on which the foreclosed homeowner executes the contract. This form must be attached to the contract, must be easily detachable and must contain in at least 12-point type, if the contract is printed, or in capital letters, if the contract is typed, the following statement written in the same language as used in the contract:

"NOTICE OF CANCELLATION..... (Enter date contract signed)

You may cancel this contract for the sale of your house, without any penalty or obligation, at any time before..... (Enter date)

To cancel this transaction, you may use any of the following methods: (1) mail or otherwise deliver a signed and dated copy of this cancellation notice; or (2) send via e-mail a notice of cancellation to..... (Name of purchaser) at ..... (Physical address of purchaser's place of business)..... (E-mail address of foreclosure consultant's place of business) NOT LATER THAN ..... (Enter date).

I hereby cancel this transaction ..... (Date)

..... (Seller's signature)"

At a minimum, the contract and the notice of cancellation must contain a physical address to which notice of cancellation may be mailed or otherwise delivered. A post office box does not constitute a physical address. A post office box may be designated for delivery by mail only if it is accompanied by a physical address at which the notice could be delivered by a method other than mail. An e-mail address may be provided in addition to the physical address.

[2007, c. 596, §1 (NEW) .]

4. **Determination of cancellation period.** The 5 business days during which the foreclosed homeowner may cancel the contract pursuant to subsection 1 does not begin to run until all parties to the contract have executed the contract and the foreclosure purchaser has complied with this section.

[2007, c. 596, §1 (NEW) .]

SECTION HISTORY
2007, c. 596, §1 (NEW).

§6196. WAIVER

Any waiver of the provisions of this chapter is void and unenforceable as contrary to public policy, except that a foreclosed homeowner may waive the 5-day right to cancel provided in section 6195 if the property is subject to a foreclosure sale within the 5 business days and the foreclosed homeowner agrees to waive the right to cancel in a handwritten statement signed by all parties holding title to the foreclosed property. [2007, c. 596, §1 (NEW).]

SECTION HISTORY

2007, c. 596, §1 (NEW).

§6197. LIABILITY

Any provision in a contract entered into on or after the effective date of this chapter that attempts or purports to require arbitration of any dispute arising under this chapter is void at the option of the foreclosed homeowner. [2007, c. 596, §1 (NEW).]

SECTION HISTORY
2007, c. 596, §1 (NEW).

§6198. PROHIBITED PRACTICES

1. **Permitted foreclosure reconveyance.** A foreclosure purchaser may not enter into or attempt to enter into a foreclosure reconveyance with a foreclosed homeowner unless:

A. The foreclosure purchaser verifies and can demonstrate that the foreclosed homeowner has a reasonable ability to pay for the subsequent conveyance of an interest back to the foreclosed homeowner. In the case of a lease with an option to purchase, payment ability also includes the reasonable ability to make the lease payments and purchase the property within the term of the option to purchase. There is a rebuttable presumption that a homeowner is reasonably able to pay for the subsequent conveyance if the owner's payments on a monthly basis for primary housing expenses and regular principal and interest payments on other personal debt do not exceed 60% of the owner's monthly gross income. For the purposes of this section, "primary housing expenses" means the sum of payments for regular principal, interest, rent, utilities, hazard insurance, real estate taxes and association dues. There is a rebuttable presumption that the foreclosure purchaser has not verified reasonable payment ability if the foreclosure purchaser has not obtained documents other than a statement by the foreclosed homeowner of assets, liabilities and income; [2007, c. 596, §1 (NEW).]

B. The foreclosure purchaser and the foreclosed homeowner complete a closing for any foreclosure reconveyance in which the foreclosure purchaser obtains a deed or mortgage from a foreclosed homeowner. For purposes of this section, "closing" means an in-person meeting to complete final documents incident to the sale of the real property or creation of a mortgage on the real property conducted by a closing agent who is not employed by or an affiliate of the foreclosure purchaser or employed by such an affiliate and who does not have a business or personal relationship with the foreclosure purchaser other than the provision of real estate settlement services; [2007, c. 596, §1 (NEW).]

C. The foreclosure purchaser obtains the written consent of the foreclosed homeowner to a grant by the foreclosure purchaser of any interest in the property during such times as the foreclosed homeowner maintains any interest in the property; [2007, c. 596, §1 (NEW).]

D. The foreclosure purchaser obtains certification from a counselor with a 3rd-party, nonprofit organization approved by the administrator that the foreclosed homeowner has received counseling on the advisability of the foreclosure reconveyance; and [2007, c. 596, §1 (NEW).]

E. The foreclosure purchaser complies with the requirements for disclosure, loan terms and conduct in Title 9-A, Article 8-A for any foreclosure reconveyance in which the foreclosed homeowner obtains a vendee interest in a contract for deed, land installment contract or bond for deed, regardless of whether the terms of the contract for deed, land installment contract or bond for deed meet the annual percentage rate or points and fees requirements for a covered loan. [2011, c. 427, Pt. D, §21 (AMD).]

[2011, c. 427, Pt. D, §21 (AMD) .]

2. **Failure to ensure reconveyance or to pay consideration.** A foreclosure purchaser may not fail to either:

A. Ensure that title to the residence in foreclosure has been reconveyed to the foreclosed homeowner; or [2007, c. 596, §1 (NEW).]

B. Make a payment to the foreclosed homeowner in an amount of at least 82% of the fair market value of the property less any payments related to the discharge of an existing mortgage within 150 days of either the eviction or voluntary relinquishment of possession of the residence in foreclosure by the foreclosed homeowner. The foreclosure purchaser shall make a detailed accounting of the basis for the payment amount, including providing written documentation of expenses, within this 150-day period. Expenses may include any payments related to the discharge of an existing mortgage made by the foreclosure purchaser to 3rd parties on behalf of the foreclosed homeowner. The accounting must be on a form prescribed by the administrator. For purposes of this paragraph:

(1) There is a rebuttable presumption that an appraisal by a person licensed or certified by an agency of the Federal Government or this State to appraise real estate constitutes the fair market value of the property; and

(2) The time for determining the fair market value amount in the foreclosure reconveyance contract must be either at the time of the execution of the foreclosure reconveyance contract or at resale. If the contract states that the fair market value must be determined at the time of resale, the fair market value must be the resale price if it is sold within 120 days of the eviction or voluntary relinquishment of the property by the foreclosed homeowner. If the contract states that the fair market value is determined at the time of resale, and the resale is not completed within 120 days of the eviction or voluntary relinquishment of the property by the foreclosed homeowner, the fair market value must be determined by an appraisal conducted during this 120-day period and payment, if required, must be made to the homeowner, but the fair market value must be recalculated as the resale price on resale and an additional payment amount, if appropriate based on the resale price, must be made to the foreclosed homeowner within 15 days of resale and a detailed accounting of the basis for the payment amount or a detailed accounting of the reasons for failure to make additional payment must be made within 15 days of resale, including providing written documentation of expenses. The accounting must be on a form prescribed by the administrator. [2007, c. 596, §1 (NEW).]

[2007, c. 596, §1 (NEW) .]

3. **Unfair or commercially unreasonable terms.** A foreclosure purchaser may not enter into repurchase or lease terms as part of the subsequent foreclosure reconveyance that are unfair or commercially unreasonable or engage in any other unfair conduct.

[2007, c. 596, §1 (NEW) .]

4. **Misrepresentation.** A foreclosure purchaser may not represent, directly or indirectly, that:

A. The foreclosure purchaser is acting as an advisor or a consultant, or in any other manner represent that the foreclosure purchaser is acting on behalf of the foreclosed homeowner; [2007, c. 596, §1 (NEW).]

B. The foreclosure purchaser has certification or licensure that the foreclosure purchaser does not have, or that the foreclosure purchaser is not a member of a licensed profession if that is untrue; [2007, c. 596, §1 (NEW).]

C. The foreclosure purchaser is assisting the foreclosed homeowner in retaining ownership to the residence in foreclosure; or [2007, c. 596, §1 (NEW).]

D. The foreclosure purchaser is assisting the foreclosed homeowner in preventing a completed foreclosure if the result of the transaction is that the foreclosed homeowner will not complete a redemption of the property. [2007, c. 596, §1 (NEW).]

[2007, c. 596, §1 (NEW) .]

5. **False, deceptive or misleading statements.** A foreclosure purchaser may not make any statements, directly or by implication, or engage in any other conduct that is false, deceptive or misleading or that has the likelihood to cause confusion or misunderstanding, including, but not limited to, statements regarding the value of the residence in foreclosure, the amount of proceeds the foreclosed homeowner may receive after a foreclosure sale, any contract term or the foreclosed homeowner's rights or obligations incident to or arising out of the foreclosure reconveyance.

[2007, c. 596, §1 (NEW) .]

6. **Door-to-door solicitation prohibited.** A foreclosure purchaser may not solicit a foreclosure reconveyance door-to-door prior to receiving an invitation from a foreclosed homeowner.

[2007, c. 596, §1 (NEW) .]

7. **Other actions.** Until the time during which the foreclosed homeowner may cancel the transaction has fully elapsed, a foreclosure purchaser may not:

A. Accept from any foreclosed homeowner an execution of or induce any foreclosed homeowner to execute any instrument of conveyance of any interest in the residence in foreclosure; [2007, c. 596, §1 (NEW).]

B. Record or file with the county register of deeds any document, including, but not limited to, any instrument of conveyance, signed by the foreclosed homeowner; [2007, c. 596, §1 (NEW).]

C. Transfer or encumber or purport to transfer or encumber any interest in the residence in foreclosure to any 3rd party, except that this paragraph may not defeat or affect a grant of interest or encumbrance against a bona fide purchaser or encumbrance for value and without notice of a violation of this chapter. Knowledge on the part of any such person or entity that the property was a residence in foreclosure does not constitute notice of a violation of this chapter. This paragraph does not abrogate any duty of inquiry that exists as to rights or interests of persons in possession of the residence in foreclosure; or [2007, c. 596, §1 (NEW).]

D. Pay the foreclosed homeowner any consideration. [2007, c. 596, §1 (NEW).]

[2007, c. 596, §1 (NEW) .]

SECTION HISTORY
2007, c. 596, §1 (NEW). 2009, c. 362, Pt. C, §4 (AMD). 2011, c. 427, Pt. D, §21 (AMD).

§6199. ENFORCEMENT

This section applies to any violation of this chapter in connection with the actions of a foreclosure purchaser. [2007, c. 596, §1 (NEW).]

1. **Enforcement.** In addition to other actions allowed pursuant to this section, the administrator may undertake any authorized actions pursuant to Title 9-A, Article 6 to ensure compliance with this chapter.

[2007, c. 596, §1 (NEW) .]

2. **Private action.** A private cause of action may be brought by a foreclosed homeowner on the basis of a violation of this chapter. A foreclosed homeowner may be awarded actual and consequential damages and costs, including reasonable attorney's fees, and may be granted injunctive, declaratory and other equitable relief the court determines appropriate in an action to enforce compliance with this chapter.

[2007, c. 596, §1 (NEW) .]

3. **Remedies cumulative.** The remedies provided in this section are cumulative and do not restrict any remedy that is otherwise available. The provisions of this chapter are not exclusive and are in addition to any other requirements, rights, remedies and penalties provided by state or federal law.

[2007, c. 596, §1 (NEW) .]

4. **Improvident transfer.** The remedies provided under Title 33, chapter 20 apply to any violation of this chapter in connection with actions of a foreclosure purchaser.

[2007, c. 596, §1 (NEW) .]

5. **Stay of eviction action.** The automatic stay of an eviction action is governed by this subsection.

A. A court hearing an eviction action against a foreclosed homeowner must issue an automatic stay without imposition of a bond if a defendant makes a prima facie showing that the defendant:

(1) Has commenced an action concerning a foreclosure reconveyance; asserts a defense under that action that the property that is the subject of the eviction action is also the subject of a foreclosure reconveyance in violation of this chapter; or asserts a claim or affirmative defense of fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice in connection with a foreclosure reconveyance;

(2) Owned the residence in foreclosure;

(3) Conveyed title to the residence in foreclosure to a 3rd party upon a promise that the defendant would be allowed to occupy the residence or other real property in which the foreclosure purchaser or a person acting in participation with the foreclosure purchaser has an interest and that the residence or other real property would be the subject of a foreclosure reconveyance; and

(4) Since the conveyance, has continuously occupied the residence in foreclosure or other real property in which the foreclosure purchaser or a person acting in participation with the foreclosure purchaser has an interest. For purposes of this subparagraph, notarized affidavits are acceptable means of proof to meet the defendant's burden. Upon good cause shown, a defendant may request and the court may grant up to an additional 2 weeks to produce evidence required to make the prima facie showing. [2007, c. 596, §1 (NEW).]

B. The automatic stay expires upon the later of:

(1) The failure of the foreclosed homeowner to commence an action in a court of competent jurisdiction in connection with a foreclosure reconveyance within 90 days after the issuance of the stay; and

(2) The issuance of an order lifting the stay by a court hearing claims related to the foreclosure reconveyance. [2007, c. 596, §1 (NEW).]

[2007, c. 596, §1 (NEW) .]

6. **Unfair trade practice.** The Attorney General may bring an action under Title 5, chapter 10 for any violation of this chapter.

[2007, c. 596, §1 (NEW) .]

SECTION HISTORY
2007, c. 596, §1 (NEW).

§6200. RULEMAKING

The administrator may adopt rules as necessary to carry out the purposes of this chapter. Rules adopted pursuant to this chapter are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2007, c. 596, §1 (NEW).]

SECTION HISTORY
2007, c. 596, §1 (NEW).

Chapter 81: ALCOHOL AND DRUG COUNSELORS

Subchapter 1: GENERAL PROVISIONS

§6201. STATE BOARD OF ALCOHOL AND DRUG COUNSELORS

The State Board of Alcohol and Drug Counselors within the Department of Professional and Financial Regulation as established by Title 5, section 12004-A, subsection 41, shall carry out the purposes of this chapter. [1995, c. 394, §2 (AMD).]

SECTION HISTORY
1977, c. 466, §2 (NEW). 1983, c. 553, §46 (AMD). 1983, c. 812, §249 (AMD). 1987, c. 395, §A192 (AMD). 1989, c. 503, §B148 (AMD). 1995, c. 394, §2 (AMD).

§6202. OBJECTIVE

The objective of this legislation is to establish a State Board of Alcohol and Drug Counselors, which establishes and ensures high professional standards among alcohol and drug counselors and which encourages and promotes quality treatment and rehabilitation services for substance abusers. [1995, c. 394, §3 (AMD).]

SECTION HISTORY
1977, c. 466, §2 (NEW). 1987, c. 395, §A193 (AMD). 1995, c. 394, §3 (AMD).

§6203. DEFINITIONS

(REPEALED)

SECTION HISTORY
1977, c. 466, §2 (NEW). 1987, c. 395, §A194 (AMD). 1991, c. 456, §§2-8 (AMD). 1995, c. 394, §§4,5 (AMD). 2003, c. 347, §§1-4 (AMD). 2003, c. 347, §25 (AFF). 2003, c. 689, §B6 (REV). 2007, c. 402, Pt. U, §1 (RP).

§6203-A. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2007, c. 402, Pt. U, §2 (NEW).]

1. **Agency.** "Agency" means an establishment, organization or institution, public or private, that is licensed by the Department of Health and Human Services and that offers, purports to offer, maintains or operates one or more programs for the assessment, diagnosis, care, treatment or rehabilitation of individuals who are suffering physically, emotionally or psychologically from the abuse of alcohol or other drugs.

[2007, c. 402, Pt. U, §2 (NEW) .]

2. **Alcohol and drug counseling aide.** "Alcohol and drug counseling aide" means an individual who is licensed by the board to engage in an apprenticeship for the purpose of acquiring knowledge and experience in the performance of alcohol and drug counseling services, including but not limited to knowledge of ethical standards. An alcohol and drug counseling aide may facilitate individual and direct group counseling or assume other facilitation duties under supervision and may supervise nonclinical activities. An alcohol and drug counseling aide may write treatment chart notations when the notations are cosigned by a certified

clinical supervisor. All work performed must be under the supervision of a certified clinical supervisor. An alcohol and drug counseling aide may not engage in independent or private practice. All work associated with the apprenticeship may be conducted only in an agency.

[2007, c. 402, Pt. U, §2 (NEW) .]

3. **Alcohol and drug counseling services.** "Alcohol and drug counseling services" are those counseling services offered for a fee, monetary or otherwise, as part of the treatment and rehabilitation of persons abusing alcohol or other drugs. The purpose of alcohol and drug counseling services is to help individuals, families and groups confront and resolve problems caused by the abuse of alcohol or other drugs. Alcohol and drug counseling services are the 12 core functions defined by rule of the board. "Alcohol and drug counseling services" includes nicotine addiction counseling and treatment services.

[2011, c. 222, §1 (AMD) .]

4. **Board.** "Board" means the State Board of Alcohol and Drug Counselors.

[2007, c. 402, Pt. U, §2 (NEW) .]

5. **Certified alcohol and drug counselor.** "Certified alcohol and drug counselor" means an individual who provides individual or group alcohol and drug counseling services unaided and who meets the criteria established in section 6214-C. A certified alcohol and drug counselor may not engage in independent or private practice. All work performed must be under the supervision of a certified clinical supervisor within an agency.

[2007, c. 402, Pt. U, §2 (NEW) .]

6. **Certified clinical supervisor.** "Certified clinical supervisor" means an individual who is licensed by the board to provide supervision to individuals who provide alcohol and drug counseling services as required by this chapter. For the purposes of this subsection, "supervision" includes, but is not limited to, oversight of case record reviews, case management, development of counseling skills, education and treatment modalities, clinical supervision log maintenance and client treatment plans and activities.

[2007, c. 402, Pt. U, §2 (NEW) .]

7. **Consumer of alcohol and drug counseling services.** "Consumer of alcohol and drug counseling services" means a person affected by or recovering from alcoholism or other drug abuse.

[2007, c. 402, Pt. U, §2 (NEW) .]

8. **Inactive alcohol and drug counselor.** "Inactive alcohol and drug counselor" means a person who is licensed to provide alcohol and drug counseling services and who applies to the board for an inactive license under section 6219-B.

[2007, c. 402, Pt. U, §2 (NEW) .]

9. **Licensed alcohol and drug counselor.** "Licensed alcohol and drug counselor" means an individual who provides individual or group alcohol and drug counseling services independently within an agency or in private practice and who meets the criteria established in section 6214-D. A licensed alcohol and drug counselor may also assume clinical supervision duties upon being licensed by the board as a certified clinical supervisor.

[2007, c. 402, Pt. U, §2 (NEW) .]

SECTION HISTORY

2007, c. 402, Pt. U, §2 (NEW). 2011, c. 222, §1 (AMD).

§6204. REPORTING

(REPEALED)

SECTION HISTORY
1977, c. 466, §2 (NEW). 1987, c. 395, §A195 (AMD). 1991, c. 456, §9 (AMD). 2007, c. 402, Pt. U, §3 (RP).

§6205. LICENSING

A person may not, unless specifically exempted by this chapter, practice as an alcohol and drug counselor or begin an internship or profess to the public to be, or assume or use the title or designation of, "certified alcohol and drug counselor," "licensed alcohol and drug counselor" or "alcohol and drug counseling aide" or the abbreviation "C.A.D.C.," "L.A.D.C." or "A.D.C.A." or any other title, designation, words, letters or device tending to indicate that such a person is licensed, certified or registered, unless that person is licensed, certified or registered with and holds a current and valid license, certificate or registration from the board. Any person who violates this section is subject to the provisions of Title 10, section 8003-C. [2007, c. 402, Pt. U, §4 (AMD).]

SECTION HISTORY
1977, c. 466, §2 (NEW). 1987, c. 395, §A196 (RPR). 1991, c. 456, §10 (AMD). 1991, c. 456, §36 (AFF). 1995, c. 394, §6 (AMD). 2003, c. 347, §5 (AMD). 2003, c. 347, §25 (AFF). 2007, c. 402, Pt. U, §4 (AMD).

§6206. EXEMPTIONS

1. **Peer groups; self-help.** Nothing in this chapter may prevent any person from engaging in or offering substance abuse services such as self-help, sponsorship through alcoholics or narcotics anonymous groups or other uncompensated substance abuse assistance.

[1991, c. 456, §11 (NEW) .]

2. **Government and school employees.** Nothing in this chapter may be construed to apply to the activities and services of an employee or other agent of a recognized academic institution; a federal, state, county or local government institution, a program agency or facility; or a school committee, school district, school approved for attendance purposes pursuant to Title 20-A, section 2901, school board or board of trustees, if the individual is performing those activities solely within the agency or under the jurisdiction of that agency and if a license granted under this chapter is not a requirement for employment.

[1991, c. 456, §11 (NEW) .]

3. **Clergy.** Nothing in this chapter may be construed to apply to the activities and services of any priest, rabbi, member of the clergy, Christian Science healer, or minister of the gospel of any religious denomination when performing counseling services as part of religious duties and in connection with a specific synagogue or church of any religious denomination.

[1991, c. 456, §11 (NEW) .]

4. **Interns.** Nothing in this chapter may be construed to apply to the activities and services of a student, intern or trainee in substance abuse counseling pursuing a course of study in counseling in a regionally accredited institution of higher education or training institution, if these activities are performed under supervision and constitute a part of the supervised course of study.

[1991, c. 456, §11 (NEW) .]

5. **Other licensed professionals.** Nothing in this chapter may prevent any other licensed person in the field of medicine, psychology, nursing, social work or professional counseling who is qualified to provide substance abuse counseling services by virtue of the requirements for that profession from engaging in or offering substance abuse counseling services if such a person does not profess to be providing the service of a substance abuse counselor as the sole professional service rendered by that person. These professionals may not be required to obtain additional certification in order to provide substance abuse counseling services as permitted by this subsection.

[1993, c. 635, §1 (AMD) .]

6. **Nicotine addiction counseling.** Nothing in this chapter may be construed to require a person engaged in providing nicotine addiction counseling or treatment services to be licensed as an alcohol and drug counselor.

[2011, c. 222, §2 (NEW) .]

SECTION HISTORY
1977, c. 466, §2 (NEW). 1987, c. 395, §A197 (AMD). 1991, c. 456, §11 (RPR). 1993, c. 635, §1 (AMD). 2011, c. 222, §2 (AMD).

§6207. REGISTRATION REQUIRED

(REPEALED)

SECTION HISTORY
1977, c. 466, §2 (NEW). 1987, c. 395, §A198 (RPR). 1991, c. 456, §12 (AMD). 1995, c. 394, §7 (AMD). 2003, c. 347, §25 (AFF). 2003, c. 347, §6 (RP).

§6207-A. LICENSE REQUIRED

Unless exempted under section 6206, a person may not practice alcohol and drug counseling or begin an apprenticeship in this State unless that person has first obtained a license, certification or registration as provided in this chapter. [2003, c. 347, §7 (NEW); 2003, c. 347, §25 (AFF).]

SECTION HISTORY
2003, c. 347, §7 (NEW). 2003, c. 347, §25 (AFF).

Subchapter 2: STATE BOARD OF ALCOHOL AND DRUG COUNSELORS HEADING: PL 1995, C. 394, §8 (RPR)

§6208. APPOINTMENT; TERMS; VACANCIES

(REPEALED)

SECTION HISTORY
1977, c. 466, §2 (NEW). 1983, c. 413, §210 (RP).

§6208-A. APPOINTMENT; TERMS; VACANCIES

1. **Membership.** The State Board of Alcohol and Drug Counselors, as established by Title 5, section 12004-A, subsection 41, consists of 5 members appointed by the Governor. Of these 5 members, 4 members must be licensed alcohol and drug counselors and one member must be a public member as defined in Title 5, section 12004-A.

[2011, c. 286, Pt. H, §1 (AMD) .]

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

[2007, c. 402, Pt. U, §5 (AMD) .]

3. **Vacancy.**

[1993, c. 600, Pt. A, §257 (RP) .]

4. **Limitation.**

[1993, c. 600, Pt. A, §257 (RP) .]

SECTION HISTORY
1983, c. 413, §211 (NEW). 1983, c. 812, §250 (AMD). 1987, c. 395, §A200 (AMD). 1989, c. 503, §B149 (AMD). 1989, c. 831, §1 (AMD). 1991, c. 456, §13 (AMD). 1993, c. 600, §§A256,257 (AMD). 1995, c. 394, §9 (AMD). 1997, c. 727, §C10 (AMD). 1999, c. 386, §R1 (AMD). 2007, c. 402, Pt. U, §5 (AMD). 2011, c. 286, Pt. H, §1 (AMD).

§6209. REMOVAL OF BOARD MEMBERS

A board member may be removed by the Governor for cause. [1983, c. 413, §212 (RPR).]

SECTION HISTORY
1977, c. 466, §2 (NEW). 1983, c. 413, §212 (RPR).

§6210. MEETINGS; CHAIR

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. [2013, c. 246, Pt. B, §16 (AMD).]

SECTION HISTORY
1977, c. 466, §2 (NEW). 1983, c. 413, §213 (RPR). 1989, c. 831, §2 (AMD). 1991, c. 456, §14 (AMD). 2007, c. 402, Pt. U, §6 (AMD). 2009, c. 112, Pt. A, §12 (AMD). 2011, c. 691, Pt. D, §10 (AMD). 2013, c. 246, Pt. B, §16 (AMD).

§6211. COMPENSATION

(REPEALED)

SECTION HISTORY
1977, c. 466, §2 (NEW). 1983, c. 812, §251 (AMD). 1995, c. 397, §80 (RP).

§6212. POWERS AND DUTIES OF THE BOARD

The board has the following powers and duties in addition to all other powers and duties imposed by this chapter. [2007, c. 402, Pt. U, §7 (AMD).]

1. **Set standards.** The board shall administer and enforce this chapter, set forth education and examination standards and evaluate the qualifications for licensure. Any standards of eligibility set by the board must be clearly defined, measurable and written in accordance with accepted standards and available to the public upon request.

[1991, c. 456, §15 (AMD) .]

2. **Adopt criteria.** The board, in cooperation with the Department of Health and Human Services, may design, adopt or design and adopt an examination or other suitable criteria for establishing a candidate's knowledge, skill and experience in alcohol and drug counseling. Any criteria adopted by the board for establishing a candidate's knowledge, skill and experience in alcohol and drug counseling must be clearly defined, have an established baseline scoring procedure that is objectively measured, be in writing and be available to the public upon request.

[2011, c. 657, Pt. AA, §83 (AMD) .]

3. **Standards of practice.** The board may establish standards of practice for all persons practicing as alcohol and drug counselors who are working in the State. Any standards set by the board for practice for alcohol and drug counselors working in the State must be clearly defined, measurable and written in accordance with accepted standards and available to the public upon request. Educational background must be a consideration in any licensing standards adopted by the board.

[2007, c. 402, Pt. U, §7 (AMD) .]

4. **Rules.** The board may adopt such rules, including but not limited to rules regarding examinations; clinical supervision; and reasonable practice and education requirements for individuals licensed under this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2007, c. 402, Pt. U, §7 (AMD) .]

4-A. **Advisory committee.**

[1989, c. 831, §12 (RP) .]

5. **Contracts.**

[1995, c. 397, §81 (RP) .]

6. **Complaints.**

[2007, c. 402, Pt. U, §7 (RP) .]

7. **Hearings.**

[2007, c. 402, Pt. U, §7 (RP) .]

8. **Records.**

[2007, c. 402, Pt. U, §7 (RP) .]

9. **Code of ethics.** The board shall adopt a code of ethics generally in keeping with standards established by the national professional associations concerned with the areas of board responsibility.

[1991, c. 456, §20 (NEW) .]

10. **Issue licenses.**

[2007, c. 402, Pt. U, §7 (RP) .]

11. **Service provider reports.**

[2003, c. 347, §25 (AFF); 2003, c. 347, §9 (RP) .]

12. **Clinical supervision.** For purposes of direct clinical supervision of licensed practitioners in the field of alcohol and drug counseling, the board may certify upon receipt of an application and fee under section 6215 licensed psychologists, physicians, registered clinical nurse specialists, clinical professional counselors, clinical social workers and any other licensed or certified mental health professionals who are qualified to provide alcohol and drug counseling services by virtue of the requirements for that profession and who meet the requirements established by board rules.

[2007, c. 402, Pt. U, §7 (AMD) .]

SECTION HISTORY
1977, c. 466, §2 (NEW). 1983, c. 413, §§214-216 (AMD). 1987, c. 395, §A201 (AMD). 1989, c. 831, §§3-7,12 (AMD). 1991, c. 456, §§15-20 (AMD). 1995, c. 394, §§10-12 (AMD). 1995, c. 397, §81 (AMD). 1997, c. 210, §10 (AMD). 1999, c. 685, §17 (AMD). 2003, c. 347, §§8-10 (AMD). 2003, c. 347, §25 (AFF). 2007, c. 402, Pt. U, §7 (AMD). 2011, c. 657, Pt. AA, §83 (AMD).

Subchapter 3: REGISTRATION AND LICENSURE
HEADING: PL 1987, C. 395, PT. A, §202 (RPR)

§6213. ELIGIBILITY REQUIREMENTS FOR PERSONS PROVIDING ALCOHOL AND DRUG COUNSELING

(REPEALED)

SECTION HISTORY
1977, c. 466, §2 (NEW). 1981, c. 501, §80 (AMD). 1987, c. 395, §A203 (AMD). 1991, c. 456, §21 (AMD). 1995, c. 394, §13 (AMD). 2003, c. 347, §25 (AFF). 2003, c. 347, §11 (RP).

§6213-A. ELIGIBILITY REQUIREMENTS FOR REGISTRATION

(REPEALED)

SECTION HISTORY
1987, c. 395, §A204 (NEW). 1991, c. 456, §22 (AMD). 1991, c. 456, §36 (AFF). 1995, c. 394, §14 (AMD). 2003, c. 347, §25 (AFF). 2003, c. 347, §12 (RP).

§6213-B. ALCOHOL AND DRUG COUNSELING AIDE; QUALIFICATION FOR LICENSURE

1. **Requirements.** The board shall issue a license to practice as an alcohol and drug counseling aide to an applicant who meets the following minimal requirements. An applicant must:

A. Be at least 18 years of age; [2003, c. 347, §13 (NEW); 2003, c. 347, §25 (AFF).]

B. Have a high school diploma or its equivalent; [2003, c. 347, §13 (NEW); 2003, c. 347, §25 (AFF).]

C. Be employed at an agency; [2003, c. 347, §13 (NEW); 2003, c. 347, §25 (AFF).]

D. Provide the name of the person who will be the applicant's certified clinical supervisor; and [2003, c. 347, §13 (NEW); 2003, c. 347, §25 (AFF).]

E. Have paid an application and license fee under section 6215. [2007, c. 402, Pt. U, §8 (AMD).]

[2007, c. 402, Pt. U, §8 (AMD) .]

SECTION HISTORY
2003, c. 347, §13 (NEW). 2003, c. 347, §25 (AFF). 2007, c. 402, Pt. U, §8 (AMD).

§6214. CERTIFICATE OF REGISTRATION

(REPEALED)

SECTION HISTORY
1977, c. 466, §2 (NEW). 1987, c. 395, §A205 (RP).

§6214-A. ELIGIBILITY REQUIREMENTS FOR QUALIFICATION AS A LICENSED ALCOHOL AND DRUG COUNSELOR

(REPEALED)

SECTION HISTORY
1987, c. 395, §A206 (NEW). 1991, c. 456, §23 (AMD). 1991, c. 456, §36 (AFF). 1995, c. 394, §§15-18 (AMD). 1995, c. 394, §28 (AFF). 1995, c. 625, §B12 (AMD). 1997, c. 210, §11 (AMD). 2003, c. 347, §25 (AFF). 2003, c. 347, §14 (RP).

§6214-B. APPLICATION

(REPEALED)

SECTION HISTORY
1987, c. 395, §A206 (NEW). 1991, c. 456, §§24,25 (AMD). 1995, c. 394, §19 (AMD). 2003, c. 347, §25 (AFF). 2003, c. 347, §15 (RP).

§6214-C. CERTIFIED ALCOHOL AND DRUG COUNSELOR; QUALIFICATION FOR CERTIFICATION

1. **Eligibility.** To be eligible to practice as a certified alcohol and drug counselor, an applicant must:

A. Be at least 18 years of age; [2003, c. 347, §16 (NEW); 2003, c. 347, §25 (AFF).]

B. Have taken and passed an examination as prescribed by board rule; [2003, c. 347, §16 (NEW); 2003, c. 347, §25 (AFF).]

C. Have paid an application and certification fee as set under section 6215; and [2003, c. 347, §16 (NEW); 2003, c. 347, §25 (AFF).]

D. Meet one of the following educational requirements:

(1) A high school diploma or its equivalent and a minimum of 4,000 hours of documented clinically supervised work experience as an alcohol and drug counseling aide consisting of at least 3 of the following alcohol and drug treatment functions:

(a) Clinical evaluation consisting of intake screening and differential assessment;

(b) Treatment planning, including initial, ongoing and discharge planning;

(c) Counseling of individuals, groups, couples or families;

(d) Case management. For purposes of this paragraph, "case management" means services that include, at a minimum, assessment of the needs of a client and the client's family, service planning, referral and linkage to other services, advocacy, monitoring and crisis management; or

(e) Client and family education; or

(2) At a minimum, course work as defined by board rule or an associate degree from an accredited college or university in behavioral sciences, addiction counseling or a related field as defined by board rule. [2003, c. 347, §16 (NEW); 2003, c. 347, §25 (AFF).]

[2003, c. 347, §16 (NEW); 2003, c. 347, §25 (AFF) .]

SECTION HISTORY
2003, c. 347, §16 (NEW). 2003, c. 347, §25 (AFF).

§6214-D. LICENSED ALCOHOL AND DRUG COUNSELOR; QUALIFICATION FOR LICENSURE

1. **Eligibility.** To be eligible to practice as a licensed alcohol and drug counselor, an applicant must:

A. Be at least 18 years of age; [2003, c. 347, §16 (NEW); 2003, c. 347, §25 (AFF).]

B. Have taken and passed an examination as prescribed by board rule; [2003, c. 347, §16 (NEW); 2003, c. 347, §25 (AFF).]

C. Have paid an application and license fee under section 6215; and [2003, c. 347, §16 (NEW); 2003, c. 347, §25 (AFF).]

D. Meet one of the following educational requirements:

(1) A high school diploma or its equivalent, course work as defined by board rule and a minimum of 6,000 hours of documented supervised practice in alcohol and drug counseling or 2,000 hours if the applicant holds a valid certified alcohol and drug counselor certification;

(2) An associate or bachelor's degree from an accredited college or university in clinically based behavioral sciences or addiction counseling or a related field as defined by board rule, course work as defined by board rule and a minimum of 4,000 hours of documented supervised practice in alcohol and drug counseling; or

(3) A master's degree from an accredited college or university in clinically based behavioral sciences or addiction counseling or a related field as defined by board rule, course work as defined by board rule and a minimum of 2,000 hours of documented supervised practice in alcohol and drug counseling. [2003, c. 347, §16 (NEW); 2003, c. 347, §25 (AFF).]

[2003, c. 347, §16 (NEW); 2003, c. 347, §25 (AFF) .]

SECTION HISTORY
2003, c. 347, §16 (NEW). 2003, c. 347, §25 (AFF).

§6215. APPLICATION; FEES

The Director of the Office of Professional and Occupational Regulation within the Department of Professional and Financial Regulation may establish by rule fees for purposes authorized under this subchapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for any one purpose may not exceed $200 annually. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [2007, c. 402, Pt. U, §9 (AMD); 2011, c. 286, Pt. B, §5 (REV).]

SECTION HISTORY
1977, c. 466, §2 (NEW). 1983, c. 204, §12 (AMD). 1983, c. 413, §217 (RPR). 1987, c. 395, §A207 (RPR). 1989, c. 831, §8 (AMD). 1991, c. 456, §26 (AMD). 1995, c. 394, §20 (AMD). 1995, c. 502, §H38 (AMD). 1999, c. 386, §R2 (AMD). 1999, c. 685, §18 (AMD). 2003, c. 347, §17 (AMD). 2003, c. 347, §25 (AFF). 2007, c. 402, Pt. U, §9 (AMD). 2011, c. 286, Pt. B, §5 (REV).

§6215-A. APPLICATION FOR LICENSURE

Applicants for licensure must submit the fee as set under section 6215. [2007, c. 402, Pt. U, §10 (NEW).]

SECTION HISTORY
2007, c. 402, Pt. U, §10 (NEW).

§6216. EXAMINATIONS

The board shall prepare an examination to measure the competence of an applicant to engage in the practice of alcohol and drug counseling in accordance with this chapter. The board may employ and cooperate with any organization or consultant in the preparation, administration and grading of an examination. The board may adopt rules establishing examination criteria. Applicants for examination must pay an examination fee as set under section 6215. [2003, c. 347, §25 (AFF); 2003, c. 347, §18 (RPR).]

SECTION HISTORY
1977, c. 466, §2 (NEW). 1989, c. 831, §9 (RPR). 1991, c. 456, §27 (AMD). 1995, c. 394, §21 (AMD). 2003, c. 347, §25 (AFF). 2003, c. 347, §18 (RPR).

Subchapter 4: SUSPENSION AND REVOCATION

§6217. SUSPENSION AND REVOCATION

(REPEALED)

SECTION HISTORY
1977, c. 466, §2 (NEW). 1977, c. 694, §657 (RP).

§6217-A. SUSPENSION AND REVOCATION

(REPEALED)

SECTION HISTORY
1977, c. 694, §658 (NEW). 1983, c. 413, §218 (RPR). 1987, c. 395, §§A208,A209 (AMD). 1991, c. 456, §§28-30 (AMD). 1995, c. 394, §§22-25 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2003, c. 347, §19 (AMD). 2003, c. 347, §25 (AFF). 2007, c. 402, Pt. U, §11 (RP).

§6217-B. DENIAL OR REFUSAL TO RENEW LICENSE; DISCIPLINARY ACTION

In addition to the grounds enumerated in Title 10, section 8003, subsection 5-A, paragraph A, the board may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A for: [2007, c. 402, Pt. U, §12 (NEW).]

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 licensee of the board; or

[2007, c. 621, §9 (AMD) .]

2. **Mental incompetency.** A legal finding of mental incompetency.

[2007, c. 402, Pt. U, §12 (NEW) .]

SECTION HISTORY
2007, c. 402, Pt. U, §12 (NEW). 2007, c. 621, §9 (AMD).

§6218. ISSUANCE AFTER DENIAL, SUSPENSION OR REVOCATION

Any individual whose license, certification or registration has been denied, suspended or revoked may apply to the board for licensure, registration or certification reinstatement one year after the date of the board's original action. A competency review is a condition of reinstatement. The board shall determine the nature of this review and shall adopt rules in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter 2-A. [2003, c. 347, §20 (AMD); 2003, c. 347, §25 (AFF).]

SECTION HISTORY
1977, c. 466, §2 (NEW). 1977, c. 694, §659 (RPR). 1983, c. 413, §219 (RPR). 1987, c. 395, §A210 (AMD). 1991, c. 456, §31 (AMD). 2003, c. 347, §20 (AMD). 2003, c. 347, §25 (AFF).

§6219. EXPIRATION AND RENEWAL

All licenses issued pursuant to this chapter expire annually on November 30th or at such other time as the Commissioner of Professional and Financial Regulation may designate. Licensees must renew their licenses on or before November 30th annually or on such other date as determined by the commissioner by filing an application, completing any continuing education requirements established by board rule and paying the renewal fee as set under section 6215. [2007, c. 402, Pt. U, §13 (AMD).]

Licenses issued pursuant to this chapter may be renewed up to 90 days after the date of expiration upon payment of a late fee in addition to the renewal fee as set under section 6215. Any person who submits an application for renewal more than 90 days after the renewal date 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 application is received, together with the late fee and renewal fee as set under section 6215, within 2 years from the date of that expiration or if the applicant is an inactive status alcohol and drug counselor. [2007, c. 402, Pt. U, §13 (AMD).]

SECTION HISTORY
1977, c. 466, §2 (NEW). 1983, c. 413, §220 (AMD). 1987, c. 395, §A211 (AMD). 1989, c. 831, §10 (AMD). 1991, c. 456, §32 (AMD). 1995, c. 394, §26 (AMD). 1999, c. 685, §19 (AMD). 2003, c. 347, §21 (AMD). 2003, c. 347, §25 (AFF). 2007, c. 402, Pt. U, §13 (AMD).

§6219-A. CONTINUING EDUCATION

1. **Requirements.** The board may adopt continuing education requirements and approve programs and courses by rule. Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

[2003, c. 347, §22 (NEW); 2003, c. 347, §25 (AFF) .]

2. **Program approval.** Each application for approval of a continuing education program or course must be submitted according to the guidelines prescribed by rule, together with the required fee under section 6215. The fee is retained whether or not the application is approved.

[2003, c. 347, §22 (NEW); 2003, c. 347, §25 (AFF) .]

3. **Core requirement.** The board may establish a core educational requirement for each license type under this chapter.

[2003, c. 347, §22 (NEW); 2003, c. 347, §25 (AFF) .]

SECTION HISTORY
2003, c. 347, §22 (NEW). 2003, c. 347, §25 (AFF).

§6219-B. INACTIVE STATUS LICENSE

1. **Placement on inactive status.** A licensee under this chapter who does not desire to perform any of the activities described in section 6203-A, subsections 2, 5, 6 and 9 and who wants to preserve the license while not engaged in any alcohol and drug counseling activity may apply for an inactive status license pursuant to Title 10, section 8003, subsection 5-A, paragraph D, subparagraph (5). The fee for inactive status licensure is set under section 6215. During inactive status, the licensee must renew the inactive license annually and pay the renewal fee as set under section 6215, but is not required to meet the continuing educational provisions of section 6219-A.

[2007, c. 402, Pt. U, §14 (AMD) .]

2. **Reinstatement to active status.** An inactive status licensee may apply for reinstatement to active status by paying the fee as set under section 6215, completing continuing education requirements as determined by board rule and submitting such additional information as the board may require. Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

[2007, c. 402, Pt. U, §14 (AMD) .]

SECTION HISTORY
2003, c. 347, §22 (NEW). 2003, c. 347, §25 (AFF). 2007, c. 402, Pt. U, §14 (AMD).

§6220. ENDORSEMENT

The board may waive the requirements of this chapter and grant a registration, certificate or license to any applicant who presents proof of authorization to practice by another jurisdiction of the United States or another country that maintains professional standards considered by the board to be substantially equivalent to or higher than those set forth in this chapter, as long as there is no cause for denial of a registration, certificate or license under section 6217-B or Title 10, section 8003, subsection 5-A, paragraph A. The applicant must pay the application and license fee as set under section 6215. [2007, c. 695, Pt. B, §14 (AMD).]

SECTION HISTORY
1977, c. 466, §2 (NEW). 1983, c. 413, §221 (AMD). 1991, c. 456, §33 (AMD). 2003, c. 347, §25 (AFF). 2003, c. 347, §23 (RPR). 2007, c. 695, Pt. B, §14 (AMD).

§6221. TREATMENT OF MINORS

Any person licensed under this chapter who renders counseling services to a minor for the treatment of problems associated with the abuse of drugs or alcohol is under no obligation to obtain the consent of that minor's parent or guardian or to inform that parent or guardian of that treatment. Nothing in this section may be construed so as to prohibit the licensed person rendering that treatment from informing that parent or guardian. For the purposes of this section "abuse of drugs" means the use of drugs solely for their stimulant, depressant or hallucinogenic effect upon the higher functions of the central nervous system and not as a therapeutic agent recommended by a practitioner in the course of medical treatment. [1991, c. 509, §28 (AMD).]

SECTION HISTORY
1979, c. 96, §5 (NEW). 1991, c. 509, §28 (AMD).

§6222. RECEIPTS AND DISBURSEMENTS

(REPEALED)

SECTION HISTORY
1985, c. 389, §25 (NEW). 1995, c. 397, §82 (RP).

Chapter 83: SOCIAL WORKERS

Subchapter 1: GENERAL PROVISIONS

§7001. DEFINITIONS

(REPEALED)

SECTION HISTORY
1977, c. 673, §3 (NEW). 1983, c. 805, §§4,5 (AMD). 1985, c. 736, §1 (RP).

§7001-A. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1985, c. 736, §2 (NEW).]

1. **Accredited educational institution.** An "accredited educational institution" is an institution accredited by the Council on Social Work Education or its successor or other organization approved by the board.

[2007, c. 402, Pt. V, §1 (AMD) .]

2. **Board.** "Board" is the State Board of Social Worker Licensure.

[1987, c. 395, Pt. B, §10 (AMD) .]

3. **Certified social worker - independent practice.** A "certified social worker - independent practice" is a person who was licensed as a certified social worker and permitted to engage in the independent practice of social work pursuant to section 7052, before January 1, 1985.

[1985, c. 736, §2 (NEW) .]

4. **Clinical setting.** A "clinical setting" is a setting where mental disorders are evaluated, prevented, diagnosed and treated using psychosocial evaluation.

[1985, c. 736, §2 (NEW) .]

5. **Consultation.** "Consultation" is regularly scheduled face-to-face case discussion and evaluation focusing on raw data, goals and objectives from the social worker's practice.

[1985, c. 736, §2 (NEW) .]

6. **Licensed clinical social worker.** A "licensed clinical social worker" is a person who has received a license as a clinical social worker from the board.

[1985, c. 736, §2 (NEW) .]

7. **Licensed master social worker.** A "licensed master social worker" is a person who has received a license as a master social worker from the board.

[1985, c. 736, §2 (NEW) .]

8. **Licensed social worker.** A "licensed social worker" is a person who has received a license as a licensed social worker from the board. In accordance with the provisions of section 7053, subsection 3-B, "licensed social worker" includes a person who has received a conditional license as a licensed social worker.

[2003, c. 429, §1 (AMD); 2003, c. 429, §7 (AFF) .]

9. **Private practice.** "Private practice" is practicing social work on a self-employed basis.

[1985, c. 736, §2 (NEW) .]

10. **Psychosocial evaluation.** "Psychosocial evaluation" includes the determination and examination by social workers of the psychosocial situation of an individual or group related to interpersonal and intrapersonal stress, family background, family interaction, living arrangements and socioeconomic problems and treatment, evaluation, plans and goals, including the diagnosis of mental illness and emotional disorders for the purpose of treatment and therapeutic intervention, but excluding the diagnosis of organic mental illness or treatment of any illness by organic therapy, to the extent permitted by the licensure provision of this chapter. In the process of making a diagnosis and formulating a treatment plan for mental illness or emotional disorder, the social worker shall assure, consistent with rules to be promulgated by the board, that the person is examined by a physician and may take into account the physician's opinion in forming the psychosocial evaluation. When a person has been seen by a physician within 3 months prior to seeking mental health treatment, a telephone conversation between that physician and the social worker may be held in lieu of the examination required by this subsection. The medical visit or the telephone conversation shall be documented in the clinical records of the person. This requirement shall apply only in cases where there is a presence of psychopathology. The board shall define standards by rule, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, for implementation of this subsection.

[1985, c. 736, §2 (NEW) .]

11. **Social work.** "Social work" means engaging in psychosocial evaluation and intervention, including therapy, to the extent permitted by the licensure provisions of this chapter, to effect a change in the feelings, attitudes and behavior of a client, whether an individual, group or community. "Social work" also means engaging in community organization, social planning, administration and research.

[1985, c. 736, §2 (NEW) .]

SECTION HISTORY
1985, c. 736, §2 (NEW). 1987, c. 395, §B10 (AMD). 2001, c. 316, §1 (AMD). 2003, c. 429, §1 (AMD). 2003, c. 429, §7 (AFF). 2007, c. 402, Pt. V, §1 (AMD).

§7002. UNLICENSED PRACTICE

Notwithstanding Title 17-A, section 4-A, any person who makes a representation to the public or uses the title of social worker, unless licensed by the board, as a licensed clinical social worker, licensed master social worker, certified social worker or a licensed social worker is subject to the provisions of Title 10, section 8003-C. Any person performing the functions of a social worker as a part of a profession or occupation or in a voluntary capacity is not subject to this section. [2007, c. 402, Pt. V, §2 (AMD).]

SECTION HISTORY
1977, c. 673, §3 (NEW). 1983, c. 413, §222 (AMD). 1983, c. 805, §6 (AMD). 1985, c. 736, §3 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 402, Pt. V, §2 (AMD).

§7003. EXEMPTIONS

(REPEALED)

SECTION HISTORY
1977, c. 673, §3 (NEW). 1979, c. 554, (AMD). 1981, c. 172, (AMD). 1983, c. 263, (AMD). 1983, c. 805, §7 (AMD). 1985, c. 199, (AMD). 1985, c. 736, §4 (RP).

§7004. SERVICES TO MINORS FOR DRUG ABUSE

Any person licensed under this chapter who renders social work services to a minor for problems associated with the abuse of drugs or alcohol is under no obligation to obtain the consent of that minor's parent or guardian or to inform that parent or guardian of the treatment. Nothing in this section may be construed so as to prohibit the licensed person rendering this treatment from informing that parent or guardian. For purposes of this section, "abuse of drugs" means the use of drugs solely for their stimulant, depressant or hallucinogenic effect upon the higher functions of the central nervous system and not as a therapeutic agent recommended by a practitioner in the course of medical treatment. [2007, c. 402, Pt. V, §3 (AMD).]

SECTION HISTORY
1977, c. 673, §3 (NEW). 1979, c. 96, §6 (AMD). 2007, c. 402, Pt. V, §3 (AMD).

§7005. COMMUNICATION BETWEEN SOCIAL WORKERS AND CLIENTS

Except at the request of, or with the consent of, the client, no person licensed under this chapter may be required to testify in any civil or criminal action, suit or proceeding at law or in equity respecting any information which he may have acquired in providing social work services to the client in a professional and contractual capacity if that information was necessary to enable him to furnish professional social work services to the client. However, when the physical or mental condition of the client is an issue in that action, suit or proceeding or when a court in the exercise of sound discretion deems the disclosure necessary to the proper administration of justice, no information communicated to, or otherwise learned by, that licensed person in connection with the provision of social work services may be privileged and disclosure may be required. [1985, c. 736, §5 (AMD).]

Nothing in this section may prohibit disclosure by a person licensed under this chapter of information concerning a client when that disclosure is required by law and nothing in this section may modify or affect the provisions of Title 22, sections 4011-A to 4015. [2001, c. 345, §9 (AMD).]

SECTION HISTORY
1977, c. 673, §3 (NEW). 1979, c. 733, §19 (AMD). 1985, c. 736, §5 (AMD). 2001, c. 345, §9 (AMD).

Subchapter 2: STATE BOARD OF SOCIAL WORKER LICENSURE HEADING: PL 1987, C. 395, PT. B, §11 (RPR)

§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. Five members of the board must be licensed clinical social workers or licensed master social workers and there must be 2 public members as defined in Title 5, section 12004-A. In addition, board members must meet the qualifications required under section 7027. [2013, c. 424, Pt. B, §12 (AMD).]

Appointments are for 3-year terms. Appointments of members must comply with Title 10, section 8009. [2007, c. 402, Pt. V, §4 (AMD).]

SECTION HISTORY
1977, c. 673, §3 (NEW). 1983, c. 413, §223 (RPR). 1983, c. 553, §43 (AMD). 1983, c. 812, §252 (AMD). 1985, c. 736, §6 (AMD). 1987, c. 395, §B12 (AMD). 1989, c. 503, §B150 (AMD). 1993, c. 600, §A258 (AMD). 2005, c. 235, §4 (AMD). 2007, c. 402, Pt. V, §4 (AMD). 2007, c. 621, §10 (AMD). 2013, c. 424, Pt. B, §12 (AMD).

§7027. QUALIFICATIONS

Members of the board shall be residents of this State, and shall be trustworthy and competent to fulfill the responsibilities imposed by this chapter. Each board member other than the public members shall have been engaged in the active practice of social work as a certified social worker - independent practice or licensed clinical, licensed master or licensed social worker for not less than 5 years prior to appointment. [1985, c. 736, §7 (AMD).]

The Governor may remove any member for cause. [1983, c. 413, §223 (NEW).]

SECTION HISTORY
1977, c. 673, §3 (NEW). 1983, c. 413, §223 (RPR). 1985, c. 736, §7 (AMD).

§7028. COMPENSATION AND EXPENSES

(REPEALED)

SECTION HISTORY
1977, c. 673, §3 (NEW). 1983, c. 812, §253 (RPR). 1987, c. 113, §1 (RPR). 1995, c. 397, §83 (RP).

§7029. MEETINGS; CHAIR

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. [2013, c. 246, Pt. B, §17 (AMD).]

SECTION HISTORY
1977, c. 673, §3 (NEW). 1983, c. 413, §224 (AMD). 1985, c. 736, §8 (AMD). 1987, c. 395, §B13 (AMD). 2007, c. 402, Pt. V, §5 (AMD). 2013, c. 246, Pt. B, §17 (AMD).

§7030. POWERS

The board has the following duties and powers, in addition to those otherwise set forth in this chapter. [2007, c. 402, Pt. V, §6 (AMD).]

1. **Licenses.** The board shall evaluate the qualifications and approve the examination to be taken by applicants for licensure under this chapter.

[2007, c. 402, Pt. V, §6 (AMD) .]

1-A. **Enforcement.**

[2007, c. 402, Pt. V, §6 (RP) .]

2. **Rules.** The board may, in accordance with procedures established by Title 5, chapter 375, subchapter 2, adopt such rules as may be reasonably necessary for the proper performance of its duties and the administration of this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2007, c. 402, Pt. V, §6 (AMD) .]

3. **Hearings.**

[2007, c. 402, Pt. V, §6 (RP) .]

4. **Contracts.**

[1995, c. 397, §84 (RP) .]

5. **Continuing educational requirements.** The board may establish continuing educational requirements as the board considers necessary. In developing these requirements, the board shall consider training requirements for social workers who are required to conduct investigations or assessments that may lead to the filing of civil or criminal actions.

[2007, c. 402, Pt. V, §6 (AMD) .]

SECTION HISTORY
1977, c. 673, §3 (NEW). 1983, c. 413, §225 (RPR). 1987, c. 735, §§67,68 (AMD). 1989, c. 268, §2 (AMD). 1995, c. 397, §84 (AMD). 2007, c. 402, Pt. V, §6 (AMD).

§7031. VOLUNTEER SOCIAL WORKERS PROJECT

The board shall contract with a statewide agency or entity that represents social workers to establish and administer the Volunteer Social Workers Project. The project, pursuant to the contract and in accordance with procedures and protocols developed by the project and approved by the board, shall match persons referred by social service agencies and providers with social workers who have agreed to provide their services on a pro bono basis. In addition, the project shall develop opportunities for social workers to participate on a pro bono basis in community organization activities. The funding of the project is the responsibility of the board and must be derived from the board's revenues. The project may also accept gifts, grants or other income from outside sources to supplement this funding. [1993, c. 584, §1 (NEW).]

SECTION HISTORY
1993, c. 584, §1 (NEW).

Subchapter 3: REGISTRATION

§7051. LICENSE REQUIRED

In order to safeguard the life, health and welfare of the people of this State, any person practicing or offering to practice as a certified social worker - independent practice or licensed clinical, licensed master or licensed social worker shall be required to submit evidence that he is qualified to so practice and shall be licensed as provided in this subchapter. [1985, c. 736, §9 (AMD).]

The board may grant a conditional license to any person eligible to take the examination for licensure while waiting to sit for the examination or to any person who is waiting to retake the examination according to rules issued by the board. [1985, c. 736, §9 (NEW).]

SECTION HISTORY
1977, c. 673, §3 (NEW). 1983, c. 805, §8 (AMD). 1985, c. 736, §9 (AMD).

§7052. INDEPENDENT PRACTICE OF SOCIAL WORK; LICENSE REQUIRED *(REPEALED)*

SECTION HISTORY
1977, c. 673, §3 (NEW). 1983, c. 805, §9 (AMD). 1985, c. 736, §10 (RP).

§7053. QUALIFICATIONS

To be eligible for a license to practice social work at any level, an applicant must be at least 18 years of age and must satisfactorily pass any examination as the board may prescribe by its rules. Each applicant must demonstrate trustworthiness and competence to engage in the practice of social work in such a manner as to safeguard the interests of the public. Applications for licensure must be submitted to the board together with the fee as set under section 7056. [2007, c. 402, Pt. V, §7 (AMD).]

The following shall be considered as minimum evidence satisfactory to the board that an applicant is qualified for licensure under this chapter. [1985, c. 736, §11 (AMD).]

1. **Licensed clinical social worker.** To be qualified as a licensed clinical social worker, an applicant shall have demonstrated to the satisfaction of the board adherence to the ethics of the social work profession; shall have successfully completed the examination prescribed by the board; and shall have received either:

A. A master's or doctoral degree in social work or social welfare from an accredited educational institution in a clinical concentration and:

(1) Shall have subsequently completed 2 years of social work experience with 96 hours of consultation in a clinical setting; or

(2) Shall have demonstrated 2 years of full-time clinical social work experience or its equivalent and have completed the graduate degree prior to January 1, 1987 and have completed 2 years of subsequent social work experience with 96 hours of consultation in a private setting; or [2013, c. 262, §3 (AMD).]

B. A master's or doctoral degree in social work in a nonclinical concentration from an accredited educational institution and:

(1) Shall have subsequently completed 4 years of social work experience with 192 hours of consultation in a clinical setting; or

(2) Shall have demonstrated 2 years of full-time clinical social work experience or its equivalent and have completed the graduate degree prior to January 1, 1987 and have completed 4 years of subsequent social work experience with 192 hours of consultation in a private setting. [2013, c. 262, §3 (AMD).]

The board may waive up to one year of the post-master of social work, clinical experience requirement pursuant to this subsection for those candidates who demonstrate to the satisfaction of the board equivalent clinical experience prior to receiving the master's degree in social work.

The board shall issue rules in accordance with Title 5, chapter 375 defining the clinical experience required for this level of licensure.

Beginning January 1, 2020, an applicant for initial licensure shall demonstrate to the satisfaction of the board successful completion of a minimum of 12 hours of course work in family or intimate partner violence, including course work in spousal or partner abuse that addresses screening, referral and intervention strategies, including knowledge of community resources, cultural factors, evidence-based risk assessment and same-gender abuse dynamics. An applicant may fulfill this requirement through course work taken in fulfillment of other educational requirements for licensure or through separate course work provided through contact hours, Internet hours or distance learning programs, as evidenced by certification from an accredited educational institution. The board shall accept certification from the accredited educational institution from which the applicant is a graduate that verifies the applicant's satisfaction of this requirement within the

applicant's completed course curriculum. An applicant for initial licensure that is unable to demonstrate completion of the requirement of 12 hours of course work at the time the initial application is submitted shall demonstrate to the board that this requirement has been fulfilled upon the applicant's first application for license renewal.

[2013, c. 262, §3 (AMD) .]

2. **Licensed master social worker.**

[2003, c. 211, §1 (AMD); T. 32, §7053, sub-§2 (RP) .]

2-A. **Licensed master social worker.** As a licensed master social worker, an applicant must have received either a masters or doctoral degree in social work or social welfare from an accredited educational institution, must have demonstrated to the satisfaction of the board adherence to the ethics of the social work profession and must have successfully completed the examination prescribed by the board. After meeting these qualifications, the applicant must receive a "licensed master social worker" license. In addition, any person wishing to practice social work in a clinical setting must receive a "licensed master social worker, conditional" license.

This subsection takes effect July 1, 2005.

[2003, c. 211, §2 (NEW) .]

3. **Requirements to be a licensed social worker.** To be qualified to be licensed as a social worker an applicant must meet one of the following requirements:

A. The applicant must have received a bachelor's degree or higher in social work or social welfare from an accredited educational institution; demonstrated to the satisfaction of the board adherence to the ethics of the social worker profession; and successfully completed the examination prescribed by the board; or [2009, c. 112, Pt. A, §13 (AMD).]

B. The applicant must have received a conditional license as a licensed social worker in accordance with subsection 3-B; completed the requirements for consultation and contact hours in accordance with subsection 3-C, paragraph B and subsection 3-D; and successfully completed the examination prescribed by the board. [2003, c. 429, §2 (AMD); 2003, c. 429, §7 (AFF).]

[2009, c. 112, Pt. A, §13 (AMD) .]

3-A. **Requirements for licensed social worker after September 30, 2003.**

[2003, c. 429, §7 (AFF); 2003, c. 429, §3 (RP) .]

3-B. **Conditional license as a licensed social worker.** The board may issue a conditional license as a licensed social worker to an applicant who provides to the board:

A. Documented proof of a bachelor's degree or higher in a field that is sufficiently related to social work or social welfare, as determined by the board; and [2009, c. 112, Pt. A, §14 (AMD).]

B. Any documentation as required by the board, which may include, but is not limited to:

(1) Evidence of employment in a social service delivery field; and

(2) Evidence of an arrangement of consultation to be provided in accordance with subsection 3-C, paragraph B.

[2013, c. 217, Pt. J, §4 (AMD).]

[2013, c. 217, Pt. J, §4 (AMD) .]

3-C. **Consultation requirements for licensed social workers and conditionally licensed social workers.** A licensed social worker or conditionally licensed social worker must complete the following requirements for consultation.

A. A licensed social worker must complete a minimum of 96 hours of consultation as determined by the board. This consultation must be concurrent with the first 3,200 hours of social work employment occurring in a period of not less than 2 years but not more than 4 years. [2003, c. 429, §4 (NEW); 2003, c. 429, §7 (AFF).]

B. A person who receives a conditional license as a licensed social worker on or after January 1, 2004 must complete the following requirements for consultation.

(1) A person who is not an employee of the Department of Health and Human Services must complete a minimum of 96 hours of consultation as determined by the board. This consultation must be concurrent with the first 3,200 hours of social work employment occurring in a period of not less than 2 years but not more than 4 years. For purposes of fulfilling the requirement of 96 hours of consultation during the first 3,200 hours of social work employment, a licensed social worker who practiced social work and obtained social work consultation hours in a long-term care setting and who held a valid license as of September 13, 2003 may count consultation hours that were obtained prior to August 3, 2004, whether the consultation hours were obtained in individual or group settings, if the consultation was provided by a licensed social worker, regardless of the group size and the eligibility requirements of the consulting licensed social worker.

(2) A person who is an employee of the Department of Health and Human Services must complete a minimum of 96 hours of consultation with a licensed social worker who has been licensed for at least 4 years or a licensed master social worker. This consultation must be concurrent with the first 3,200 hours of social work employment occurring in a period of not less than 2 years but not more than 4 years. [2005, c. 173, §1 (AMD).]

[2005, c. 173, §1 (AMD) .]

3-D. **Contact hours for conditionally licensed social workers.** A person who receives a conditional license as a licensed social worker on or after January 1, 2004 must complete, within the first 2 years of licensure, contact hours, as that term is defined by the board, in an amount set by the board. Of these contact hours required by the board, 6 hours must be on the subject of social work ethics and 6 hours must be on the subject of psychosocial assessment.

[2003, c. 429, §4 (NEW); 2003, c. 429, §7 (AFF) .]

4. **Associate social worker.**

[1985, c. 736, §11 (RP) .]

Any person having the necessary qualifications prescribed in this chapter to entitle that person to licensure as a licensed clinical, licensed master or licensed social worker is eligible for that license though that person may not be practicing that person's profession at the time of making the application. [2013, c. 2, §39 (COR).]

SECTION HISTORY
1977, c. 673, §3 (NEW). 1983, c. 413, §226 (AMD). 1983, c. 805, §10 (RPR). 1985, c. 736, §11 (AMD). 1987, c. 395, §B14 (AMD). 1987, c. 735, §69 (AMD). 1989, c. 682, (AMD). RR 2001, c. 1, §41 (COR). 2001, c. 316, §§2,3 (AMD). 2001, c. 542, §§1,2 (AMD). 2003, c. 211, §§1,2 (AMD). 2003, c. 429, §§2-4 (AMD). 2003, c. 429, §7 (AFF). 2003, c. 689, §B6 (REV). 2005, c. 173, §1 (AMD). 2007, c. 402, Pt. V, §7 (AMD). 2009, c. 112, Pt. A, §§13, 14 (AMD). RR 2013, c. 2, §39 (COR). 2013, c. 217, Pt. J, §4 (AMD). 2013, c. 262, §3 (AMD).

§7053-A. FUNCTIONS

No social worker at any level may diagnose organic mental illness or treat any illness by organic therapy. [1985, c. 736, §12 (NEW).]

1. **Licensed master social worker.** Any licensed master social worker may:

A. Engage in administration, research, consultation, social planning and teaching related to the functions in this section; [1985, c. 736, §12 (NEW).]

B. Perform all the functions of a licensed social worker; and [1985, c. 736, §12 (NEW).]

C. Engage in a nonclinical private practice. [1985, c. 736, §12 (NEW).]

In addition, a licensed master social worker having met the requirements for licensure as a licensed clinical social worker prior to January 1, 1987, except for having completed the licensed clinical social worker examination, may engage in the clinical consultation of licensed master social worker, conditional for the purpose of preparing the licensed master social worker, conditional for eventual licensed clinical social workers' status or regular licensure. This includes responsibility for ongoing training and evaluation. The licensed master social worker has an obligation to assess the licensed master social worker, conditional's competence and ethics and share this assessment with the Board of Social Work Licensure at the time the licensed master social worker applies for the licensed clinical level.

In addition to paragraphs A, B and C, a person holding a "licensed master social worker, conditional" license may engage in psychosocial evaluation, including diagnosis and treatment of mental illness and emotional disorders, and provide clinical consultation to licensed social workers, social work students, other professionals practicing related professions and paraprofessionals engaging in related activities.

A "licensed master social worker, conditional" may not engage in private clinical practice, unless permitted under section 7053, subsection 1, and must receive individual consultation 4 hours a month while practicing social work in a clinical setting.

[1987, c. 395, Pt. B, §15 (AMD) .]

2. **Licensed clinical social worker.** A licensed clinical social worker may:

A. Practice social work in a clinical setting without consultation; [1985, c. 736, §12 (NEW).]

B. Engage in psychosocial evaluation, including diagnosis and treatment of mental illness and emotional disorders; [1985, c. 736, §12 (NEW).]

C. Engage in clinical private practice of social work; [1985, c. 736, §12 (NEW).]

D. Perform all the functions of a licensed master social worker; and [1985, c. 736, §12 (NEW).]

E. Engage in the clinical consultation of licensed master social workers for the purpose of preparing the licensed master social worker for eventual licensed clinical social workers' status or regular licensure. This includes responsibility for ongoing training and evaluation. The licensed clinical social worker has an obligation to assess the licensed master social worker's competence and ethics and share this assessment with the Board of Social Worker Licensure at the time the licensed master social worker applies for the licensed clinical level. [1987, c. 395, Pt. B, §16 (AMD).]

[1987, c. 395, Pt. B, §16 (AMD) .]

3. **Certified social worker - independent practice.** A certified social worker - independent practice may:

A. Perform all the functions of a licensed master social worker; [1985, c. 736, §12 (NEW).]

B. Practice social work in a clinical setting without consultation; and [1985, c. 736, §12 (NEW).]

C. Engage in clinical private practice of social work.

In addition, a certified social worker - independent practice having met the requirements for licensure as a licensed clinical social worker prior to January 1, 1987, except for having completed the licensed clinical social worker examination, may engage in the clinical consultation of licensed master social worker, conditional for the purpose of preparing the licensed master social worker, conditionals for eventual licensed clinical social workers' status or regular licensure. This includes responsibility for ongoing training and evaluation. The certified social worker - independent practice has an obligation to assess the licensed master social worker, conditional's competence and ethics and share this assessment with the Board of Social Work Licensure at the time the licensed master social worker applies for the licensed clinical level. [1987, c. 395, Pt. B, §17 (AMD).]

[1987, c. 395, Pt. B, §17 (AMD) .]

4. **Licensed social worker.** A licensed social worker may:

A. Engage in psychosocial evaluation, excluding the diagnosis and treatment of mental illness, and conduct basic data gathering of records and specific life issues of individuals, groups and families, assess this data and formulate and implement a plan to achieve specific goals related to specific life issues; [1985, c. 736, §12 (NEW).]

B. Serve as an advocate for clients or groups of clients for the purpose of achieving specific goals relating to specific life issues; [1985, c. 736, §12 (NEW).]

C. Refer clients to other professional services; [1985, c. 736, §12 (NEW).]

D. Plan, manage, direct or coordinate social services; and [1985, c. 736, §12 (NEW).]

E. Participate in training and education of social work students from an accredited institution or an educational institution in candidacy for accreditation with the Council on Social Work Education or a successor or other organization approved by the board and supervise other licensed social workers. [2007, c. 402, Pt. V, §8 (AMD).]

A licensed social worker may not engage in the private practice of social work, diagnose mental illness and emotional disorders or provide psychotherapy. A licensed social worker with less than 2 years' experience must receive consultation from either a licensed master social worker, a licensed clinical social worker or a certified social worker - independent practice in a manner to be prescribed by the board on a group or individual basis 4 hours a month. Licensed social workers in health care facilities licensed by the Department of Health and Human Services must receive consultation on a quarterly basis in a manner prescribed by the department. The department staff giving consultation to intermediate care facilities must be on the master or clinical level by January 1, 1993.

State agencies employing social workers are responsible for providing supervision necessary for those social workers to maintain their licenses.

[2007, c. 402, Pt. V, §8 (AMD) .]

SECTION HISTORY
1985, c. 736, §12 (NEW). 1987, c. 395, §§B15-B17 (AMD). 1989, c. 296, §1 (AMD). 2001, c. 316, §4 (AMD). 2003, c. 429, §5 (AMD). 2003, c. 429, §7 (AFF). 2003, c. 689, §B6 (REV). 2007, c. 402, Pt. V, §8 (AMD).

§7054. REGISTRATION WITHOUT EXAMINATION

(REPEALED)

SECTION HISTORY
1977, c. 673, §3 (NEW). 1983, c. 805, §11 (AMD). 1985, c. 736, §13 (RP).

§7054-A. LICENSURE WITHOUT EXAMINATION

A person holding a certificate of registration or license under the laws of another state, territory or possession of the United States, the District of Columbia or of any foreign country that is the equivalent of a license as a licensed clinical, licensed master or licensed social worker under this chapter who meets the requirements of this chapter, based upon verified evidence may, upon application, be licensed without further examination. [2007, c. 402, Pt. V, §9 (AMD).]

Any person registered by the board prior to the effective date of this section, under former section 7054, as a registered social worker or an associate social worker shall automatically be licensed as a "licensed social worker" without further examination. [1985, c. 736, §14 (NEW).]

Any person certified by the board prior to the effective date of this section or under former section 7054 as a certified social worker and who engages in the independent practice of social work pursuant to section 7052 shall be licensed as a "certified social worker - independent practice" and may continue to practice social work as previously authorized. This person has the option to be licensed as a "licensed master social worker" without further examination if the person has a masters' degree in social work or social welfare. [1985, c. 736, §14 (NEW).]

Any other person certified by the board prior to the effective date of this section or under former section 7054 as a certified social worker shall automatically be licensed as a "licensed master social worker" without further examination and any person licensed as a "licensed clinical social worker" prior to the effective date of this section, under former section 7054, shall remain licensed as a "licensed clinical social worker" without further examination. [1985, c. 736, §14 (NEW).]

Any person having received a masters or doctoral degree in social work or social welfare from an accredited educational institution and having completed 5 years' experience prior to January 1, 1987, with 3 years or its equivalent having been gained within 5 years of the date of application for licensure, shall be automatically licensed as a "licensed master social worker." [1987, c. 395, Pt. B, §18 (NEW).]

SECTION HISTORY
1985, c. 736, §14 (NEW). 1987, c. 395, §B18 (AMD). 1987, c. 537, (AMD). 1989, c. 296, §2 (AMD). 2007, c. 402, Pt. V, §9 (AMD).

§7054-B. STATE EMPLOYEES

(REPEALED)

SECTION HISTORY
1989, c. 296, §§3,4,5 (NEW).

§7055. CERTIFIED SOCIAL WORKER; EQUIVALENCY REGISTRATION

(REPEALED)

SECTION HISTORY
1977, c. 673, §3 (NEW). 1985, c. 736, §15 (RP).

§7056. FEES

The Director of the Office of Professional and Occupational Regulation within the Department of Professional and Financial Regulation may establish by rule fees for purposes authorized under this chapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for any one

purpose may not exceed $175. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [2007, c. 402, Pt. V, §10 (RPR); 2011, c. 286, Pt. B, §5 (REV).]

SECTION HISTORY
1977, c. 673, §3 (NEW). 1983, c. 413, §227 (AMD). 1983, c. 805, §12 (AMD). 1985, c. 736, §16 (AMD). 1987, c. 113, §2 (AMD). 2007, c. 402, Pt. V, §10 (RPR). 2011, c. 286, Pt. B, §5 (REV).

§7057. EXAMINATIONS

Written examinations shall be held at such times and places as the board shall determine and shall be based on fundamental social work subjects as determined by the board. [1977, c. 673, §3 (NEW).]

The passing grade on any examination must be established by the board based upon National Testing Scores set by the testing company. [2007, c. 402, Pt. V, §11 (AMD).]

SECTION HISTORY
1977, c. 673, §3 (NEW). 1983, c. 413, §228 (AMD). 1985, c. 736, §17 (AMD). 2007, c. 402, Pt. V, §11 (AMD).

§7058. CERTIFICATES

(REPEALED)

SECTION HISTORY
1977, c. 673, §3 (NEW). 2007, c. 402, Pt. V, §12 (RP).

§7059. SUSPENSION, REVOCATION AND REISSUANCE

(REPEALED)

SECTION HISTORY
1977, c. 673, §3 (NEW). 1983, c. 413, §229 (RPR). 1985, c. 736, §18 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 402, Pt. V, §13 (RP).

§7059-A. DENIAL OR REFUSAL TO RENEW LICENSE; DISCIPLINARY ACTION

In addition to the grounds enumerated in Title 10, section 8003, subsection 5-A, paragraph A, the board may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A for: [2007, c. 402, Pt. V, §14 (NEW).]

1. **Addiction to the use of alcohol or other drugs.** Addiction, as confirmed by medical findings, to the use of alcohol or other drugs, that has resulted in the licensed clinical, licensed master or licensed social worker or certified social worker - independent practice being unable to perform duties or perform those duties in a manner that would not endanger the health or safety of the clients to be served; or

[2007, c. 402, Pt. V, §14 (NEW) .]

2. **Mental incompetency.** A medical finding of mental incompetency.

[2007, c. 402, Pt. V, §14 (NEW) .]

SECTION HISTORY

2007, c. 402, Pt. V, §14 (NEW).

§7060. EXPIRATION AND RENEWALS

A license renewal fee as set under section 7056 must be paid by the licensee. Licenses expire biennially on December 31st or at such other times as the Commissioner of Professional and Financial Regulation may designate. Each renewal is contingent upon evidence of participation in a continuing professional education course or program as approved by the board. A license may be renewed up to 90 days after the date of expiration upon payment of a late fee in addition to the renewal fee as set under section 7056. Any person who submits an application for renewal more than 90 days after the renewal date 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 the renewal application is received, together with the late fee and renewal fee, within 2 years from the date of the expiration. [2007, c. 402, Pt. V, §15 (AMD).]

Beginning January 1, 2020, an applicant for license renewal shall demonstrate to the satisfaction of the board a one-time successful completion of a minimum of 12 hours of course work in family or intimate partner violence, including course work in spousal or partner abuse that addresses screening, referral and intervention strategies, including knowledge of community resources, cultural factors, evidence-based risk assessment and same-gender abuse dynamics. An applicant may fulfill this requirement through course work provided through contact hours, Internet hours or distance learning programs, as evidenced by certification from an accredited educational institution or equivalent teaching or practice experience. The board may accept equivalent courses in family or intimate partner violence screening and referral and intervention strategies or equivalent teaching or practice experience completed prior to January 1, 2020 in satisfaction of this requirement. Continuing education courses taken pursuant to this paragraph may be used to satisfy the licensee's required hours of continuing education. [2013, c. 262, §4 (NEW).]

A licensee who is no longer actively practicing social work may apply for an inactive status license pursuant to Title 10, section 8003, subsection 5-A, paragraph D, subparagraph (5). The holder of an inactive status license may not practice social work in the State. The fee for inactive status licensure is set under section 7056. The holder of an inactive status license is required to renew the license annually and pay the renewal fee as set under section 7056, but is not required to meet the continuing education requirement of this chapter and the rules adopted under it. [2007, c. 402, Pt. V, §15 (NEW).]

In addition to the other requirements of this section, a licensed social worker must: [2003, c. 429, §7 (AFF); 2003, c. 429, §6 (RPR).]

1. **Not employee of Department of Health and Human Services.** If not employed by the Department of Health and Human Services, provide documentation of 96 hours of consultation as determined by the board during the first 3,200 hours of social work employment in a period of not less than 2 years but not more than 4 years. For purposes of fulfilling the requirement of 96 hours of consultation during the first 3,200 hours of social work employment, a licensed social worker who practiced social work and obtained social work consultation hours in a long-term care setting and who held a valid license as of September 13, 2003 may count consultation hours that were obtained prior to August 3, 2004, whether the consultation hours were obtained in individual or group settings, if the consultation was provided by a licensed social worker, regardless of the group size and the eligibility requirements of the consulting licensed social worker; or

[2005, c. 173, §2 (AMD) .]

2. **Employee of Department of Health and Human Services.** If employed by the Department of Health and Human Services, provide documentation of either:

A. A minimum of 96 hours of consultation with a licensed social worker who has been licensed for at least 4 years or a licensed master social worker. This consultation must be concurrent with the first 3,200 hours of social work employment occurring in a period of not less than 2 years but not more than 4 years; or [2003, c. 429, §6 (NEW); 2003, c. 429, §7 (AFF).]

B. A minimum of 96 hours of consultation concurrent with the person's first 3,200 hours of social work employment occurring in a period of not less than 2 years but not more than 4 years with a licensed social worker who has been licensed for at least 2 years, has been designated by the department as a supervisor trainee and is concurrently receiving 48 hours of consultation with a licensed master social worker. [2003, c. 429, §6 (NEW); 2003, c. 429, §7 (AFF).]

[2003, c. 429, §6 (NEW); 2003, c. 429, §7 (AFF); 2003, c. 689, Pt. B, §6 (REV) .]

SECTION HISTORY
1977, c. 673, §3 (NEW). 1983, c. 204, §13 (AMD). 1983, c. 413, §§230,231 (AMD). 1985, c. 736, §19 (AMD). 1987, c. 113, §3 (AMD). 1987, c. 395, §B19 (AMD). 1987, c. 769, §A122 (AMD). 1993, c. 659, §A8 (AMD). 2001, c. 316, §5 (AMD). 2003, c. 429, §7 (AFF). 2003, c. 429, §6 (RPR). 2003, c. 689, §B6 (REV). 2005, c. 173, §2 (AMD). 2007, c. 402, Pt. V, §15 (AMD). 2013, c. 262, §4 (AMD).

§7061. RECEIPTS AND DISBURSEMENTS

(REPEALED)

SECTION HISTORY
1977, c. 673, §3 (NEW). 1985, c. 389, §26 (RPR). 1995, c. 397, §85 (RP).

§7062. REPORTS.

(REPEALED)

SECTION HISTORY
1977, c. 673, §3 (NEW). 1987, c. 395, §B20 (AMD). 2007, c. 402, Pt. V, §16 (RP).

§7063. APPLICATION

All persons licensed, registered or certified on any level under the prior social work registration law shall be entitled to practice social work as previously authorized as long as licensure remains current. [1985, c. 736, §20 (NEW).]

SECTION HISTORY
1985, c. 736, §20 (NEW).

Chapter 85: POLYGRAPH EXAMINERS

§7151. SHORT TITLE

(REPEALED)

SECTION HISTORY
1979, c. 209, §2 (NEW). 2013, c. 316, §5 (AFF). 2013, c. 316, §2 (RP).

§7152. PURPOSE

(REPEALED)

SECTION HISTORY
1979, c. 209, §2 (NEW). 2013, c. 316, §5 (AFF). 2013, c. 316, §2 (RP).

§7153. DEFINITIONS

(REPEALED)

SECTION HISTORY
1979, c. 209, §2 (NEW). 2013, c. 316, §5 (AFF). 2013, c. 316, §2 (RP).

§7154. PROHIBITIONS

(REPEALED)

SECTION HISTORY
1979, c. 209, §2 (NEW). 1979, c. 541, §§B41, B42 (AMD). 2001, c. 386, §7 (AMD). RR 2009, c. 2, §90 (COR). 2013, c. 316, §5 (AFF). 2013, c. 316, §2 (RP).

§7155. EXAMINER'S LICENSE QUALIFICATIONS

(REPEALED)

SECTION HISTORY
1979, c. 209, §2 (NEW). 2013, c. 316, §5 (AFF). 2013, c. 316, §2 (RP).

§7156. ACQUISITION OF LICENSE BY PRESENT EXAMINERS

(REPEALED)

SECTION HISTORY
1979, c. 209, §2 (NEW). 2013, c. 316, §5 (AFF). 2013, c. 316, §2 (RP).

§7157. APPLICATION FOR ORIGINAL LICENSE

(REPEALED)

SECTION HISTORY
1979, c. 209, §2 (NEW). 2013, c. 316, §5 (AFF). 2013, c. 316, §2 (RP).

§7158. APPLICANT WITH OUT-OF-STATE LICENSE

(REPEALED)

SECTION HISTORY
1979, c. 209, §2 (NEW). 2013, c. 316, §5 (AFF). 2013, c. 316, §2 (RP).

§7159. INTERNSHIP LICENSE

(REPEALED)

SECTION HISTORY
1979, c. 209, §2 (NEW). 2013, c. 316, §5 (AFF). 2013, c. 316, §2 (RP).

§7160. TERMINATION AND RENEWAL OF EXAMINER'S LICENSE

(REPEALED)

SECTION HISTORY
1979, c. 209, §2 (NEW). 2013, c. 316, §5 (AFF). 2013, c. 316, §2 (RP).

§7161. REFUSAL; SUSPENSION; REVOCATION; GROUNDS

(REPEALED)

SECTION HISTORY
1979, c. 209, §2 (NEW). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2013, c. 316, §5 (AFF). 2013, c. 316, §2 (RP).

§7162. VIOLATION BY ONE EXAMINER OR TRAINEE NOT TO AFFECT EMPLOYER

(REPEALED)

SECTION HISTORY
1979, c. 209, §2 (NEW). 2013, c. 316, §5 (AFF). 2013, c. 316, §2 (RP).

§7163. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT

(REPEALED)

SECTION HISTORY
1979, c. 209, §2 (NEW). 2013, c. 316, §5 (AFF). 2013, c. 316, §2 (RP).

§7164. SURRENDER OF LICENSE

(REPEALED)

SECTION HISTORY
1979, c. 209, §2 (NEW). 2013, c. 316, §5 (AFF). 2013, c. 316, §2 (RP).

§7165. JURISDICTION OVER NONRESIDENTS

(REPEALED)

SECTION HISTORY
1979, c. 209, §2 (NEW). 2013, c. 316, §5 (AFF). 2013, c. 316, §2 (RP).

§7166. LIMITATIONS ON USES IN EMPLOYMENT

(REPEALED)

SECTION HISTORY
1979, c. 209, §2 (NEW). 2013, c. 316, §5 (AFF). 2013, c. 316, §2 (RP).

§7167. PENALTIES

(REPEALED)

SECTION HISTORY
1979, c. 209, §2 (NEW). 2013, c. 316, §5 (AFF). 2013, c. 316, §2 (RP).

§7168. RULES

(REPEALED)

SECTION HISTORY
1979, c. 209, §2 (NEW). 2013, c. 316, §5 (AFF). 2013, c. 316, §2 (RP).

§7169. ADMISSIBILITY OF EVIDENCE

(REPEALED)

SECTION HISTORY
1979, c. 541, §B43 (NEW). 2013, c. 316, §5 (AFF). 2013, c. 316, §2 (RP).

Chapter 86: POLYGRAPH EXAMINERS ACT

Subchapter 1: GENERAL PROVISIONS

§7351. SHORT TITLE

This chapter may be known and cited as "the Polygraph Examiners Act." [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

SECTION HISTORY
2013, c. 316, §3 (NEW). 2013, c. 316, §5 (AFF).

§7352. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

1. **Board.** "Board" means the Polygraph Examiners Advisory Board under section 7371.

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

2. **Commissioner.** "Commissioner" means the Commissioner of Public Safety.

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

3. **Department.** "Department" means the Department of Public Safety.

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

4. **Instrument.** "Instrument" means a device used to test a subject to directly or indirectly detect deception or verify the truth of a statement by, at a minimum, recording visually, permanently and simultaneously a subject's cardiovascular, respiratory and electrodermal patterns.

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

5. **Intern.** "Intern" means a person who holds a polygraph examiner intern license under this chapter.

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

6. **Polygraph examiner.** "Polygraph examiner" means a person licensed under this chapter to use an instrument.

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

7. **Polygraph examiner internship.** "Polygraph examiner internship" means a course of study of polygraph examinations and of the administration of polygraph examinations by an intern under the supervision and control of a polygraph examiner.

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

SECTION HISTORY
2013, c. 316, §3 (NEW). 2013, c. 316, §5 (AFF).

§7353. COMMISSIONER; POWERS AND DUTIES

1. **Administer and enforce.** The commissioner shall administer and enforce this chapter.

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

2. **Rules.** The commissioner shall adopt rules necessary to carry out the purposes of this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

3. **Board.** The commissioner shall consult with the board concerning the licensing of polygraph examiners, polygraph examiner internship requirements and any other matters necessary for the administration of this chapter.

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

SECTION HISTORY
2013, c. 316, §3 (NEW). 2013, c. 316, §5 (AFF).

§7354. LICENSE REQUIRED TO MAINTAIN ACTION OR COUNTERCLAIM

A person may not maintain an action or counterclaim against another person in a court in this State with respect to an agreement for or the performance of a service for which a license is required by this chapter, including the recovery of any compensation under the agreement or for the service, unless the person alleges and proves that the other person was licensed at the time of making the agreement or performing the service. [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

SECTION HISTORY
2013, c. 316, §3 (NEW). 2013, c. 316, §5 (AFF).

§7355. GENERAL CRIMINAL PENALTY

1. **General violation.** A person commits a Class E crime if the person:

A. Intentionally violates this chapter other than section 7365; [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

B. Falsely represents that the person:

(1) Has been or is a polygraph examiner or intern; or

(2) Is qualified to use an instrument; [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

C. Maintains possession of a suspended or revoked polygraph examiner license; or [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

D. Fails to make a report required by section 7361, subsection 1, paragraph F. [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

2. **Violation of confidentiality.** A person commits a Class D crime if the person intentionally violates section 7365.

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

SECTION HISTORY
2013, c. 316, §3 (NEW). 2013, c. 316, §5 (AFF).

Subchapter 2: POLYGRAPH EXAMINATION ADMINISTRATION GENERALLY

§7361. POLYGRAPH EXAMINER'S DUTIES AND RESPONSIBILITIES GENERALLY

1. **Duties and responsibilities.** A polygraph examiner or an intern shall:

A. Abide by the provisions of this chapter and rules adopted pursuant to this chapter; [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

B. Ensure that confidential information protected under section 7365 is disclosed only as authorized by that section; [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

C. Inform a subject to be examined of the nature of the examination; [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

D. Inform the subject of an examination of the examination results on request at the completion of the examination; [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

E. Provide within a reasonable time information requested by the commissioner as the result of a formal complaint to the commissioner alleging a violation of this chapter; and [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

F. Immediately report to the Department of Health and Human Services when the examiner knows or has reasonable cause to suspect that a person 14 years of age or younger will be the victim of a sexual assault crime as provided under Title 17-A, chapter 11 or is in imminent danger of substantial bodily injury or death.

The duty to report provided in this paragraph does not abrogate any other duty an examiner has to report by virtue of the examiner's profession pursuant to Title 22, section 3477 or 4011-A. [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

2. **Prohibitions.** A polygraph examiner or an intern may not:

A. Aid or abet another to violate this chapter or a rule adopted under this chapter; [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

B. Allow the person's license issued under this chapter to be used by an unlicensed person in violation of this chapter; [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

C. Make a material misstatement in an application for the issuance or renewal of a license; [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

D. Make a misrepresentation or false promise or cause the printing of a false or misleading advertisement to directly or indirectly obtain business; [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

E. Conduct an examination without the informed consent of the subject of the examination; [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

F. Administer a polygraph examination to a minor without the written consent of a parent of the minor or the minor's legal guardian; [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

G. Make a false report concerning an examination for polygraph examination purposes; or [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

H. Commit a criminal offense, including, but not limited to, an offense that directly relates to the duties and responsibilities of a polygraph examiner. [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

3. **Disciplinary action.** A person who fails to comply with this section is subject to disciplinary action pursuant to section 7388.

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

SECTION HISTORY
2013, c. 316, §3 (NEW). 2013, c. 316, §5 (AFF).

§7362. MINIMUM POLYGRAPH INSTRUMENT REQUIREMENTS

1. **Minimum instrument requirements.** An instrument must record visually, permanently and simultaneously a subject's cardiovascular, respiratory and electrodermal patterns. An instrument used by a polygraph examiner may also record patterns of other physiological changes.

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

2. **Other devices prohibited.** The use of any device by a polygraph examiner for the purpose of directly or indirectly detecting deception or verifying truth of statements that does not meet the minimum instrument requirements set forth in subsection 1 is prohibited.

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

SECTION HISTORY
2013, c. 316, §3 (NEW). 2013, c. 316, §5 (AFF).

§7363. PROHIBITIONS

1. **Practice without a license.** A person may not administer polygraph examinations, purport to be a polygraph examiner or use any other title that would cause members of the public to believe that the person is a polygraph examiner without first securing a license under this chapter. This prohibition does not apply to an employee of the Federal Government who administers polygraph examinations in the course of employment or who purports to be a polygraph examiner in connection with employment.

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

2. **Prohibited questioning.** A polygraph examiner conducting a polygraph examination may not ask any questions pertaining to sexual behavior of any type or questions that could be construed as being sexually oriented, unless the examination is conducted either in the course of a criminal investigation by law enforcement officials or in the course of civil litigation in which sexual behavior is at issue or the examination is conducted for the purpose of ensuring compliance with court-ordered sex offender treatment. This prohibition does not apply to polygraph examinations for applicants for positions in law enforcement agencies. If the polygraph examination is conducted for the purpose of ensuring compliance with court-ordered sex offender treatment, the results of the examination are not admissible into evidence in a court proceeding.

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

3. **Political or religious beliefs.** A polygraph examiner may not ask questions regarding the political or religious beliefs of any individual during a polygraph examination, except when the examination is conducted in the course of a criminal investigation conducted by law enforcement officials and the political or religious beliefs of the individual may be relevant to that investigation.

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

4. **Knowledge and consent.** A polygraph examiner may not conduct a polygraph examination without the subject's full knowledge and consent.

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

SECTION HISTORY
2013, c. 316, §3 (NEW). 2013, c. 316, §5 (AFF).

§7364. LIMITATIONS ON USES IN EMPLOYMENT

1. **Preemployment screening.** An employer may not, directly or indirectly, require, request or suggest that an applicant for employment submit to a polygraph examination as a condition of obtaining employment or administer or cause to be administered to an applicant such an examination or use or refer to the results of such an examination for hiring purposes. For purposes of this subsection, "employer" includes an employment agency and "applicant" includes a person seeking to use an employment agency's services.

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

2. **Current employees.** An employer may not, directly or indirectly, require, request or suggest that an employee submit to a polygraph examination as a condition of continued employment or administer or cause to be administered to an employee such an examination or use or refer to the results of such an examination for employment purposes.

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

3. **Exception.** This section does not apply to employees of or applicants for employment with law enforcement agencies.

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

4. **Voluntary request.** This section does not prohibit an employee from voluntarily requesting a polygraph examination in connection with employment or an employer from using or referring to the results of any examination so requested, except that the results of that examination may not be used against the employee by the employer for any purpose, the employer must give the employee a copy of this chapter when the employee requests the examination and the examination must be recorded or a witness of the employee's choice must be present during the examination, or both, as the employee requests.

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

SECTION HISTORY
2013, c. 316, §3 (NEW). 2013, c. 316, §5 (AFF).

§7365. CONFIDENTIALITY OF POLYGRAPH EXAMINATION RESULTS AND RELATED RECORDS

1. **Disclosure prohibited.** A polygraph examiner, intern or employee of a polygraph examiner may not disclose information acquired from a polygraph examination, or records resulting from a polygraph examination, to another person other than:

A. The subject of the examination; [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

B. Any other person specifically designated in writing by the subject of the examination; [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

C. A member or agent of the department that licenses a polygraph examiner or law enforcement agency that supervises or controls a polygraph examiner's activities; [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

D. Another polygraph examiner in private, professional consultation; or [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

E. The Department of Health and Human Services pursuant to section 7361, subsection 1, paragraph F. [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

2. **Further disclosure prohibited.** A polygraph examiner or other person to whom information acquired from a polygraph examination is disclosed under subsection 1 may not further disclose the information or records.

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

3. **Examination records.** Notwithstanding any other provision of law, the pre-test, in-test and post-test records associated with the administration of a polygraph examination that is administered for preemployment screening purposes or in association with a law enforcement investigation are confidential for the purposes of Title 1, chapter 13 and are not subject to compulsory legal process or otherwise discoverable or admissible in evidence in any civil action unless the confidentiality is expressly waived, in writing, by the subject of the examination. For purposes of this subsection, "records" includes, but is not limited to, video and audio recordings, graphs and examination results.

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

4. **Records in custody of commissioner.** Records in the custody of the commissioner pursuant to this chapter are confidential if those records contain:

A. Personal medical information of an applicant or licensee under this chapter; or [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

B. Personally identifying information of a minor to whom a polygraph examination has been administered. [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

SECTION HISTORY
2013, c. 316, §3 (NEW). 2013, c. 316, §5 (AFF).

§7366. INFORMATION INCLUDED IN CONTRACT FOR SERVICES AND WAIVER OF LIABILITY

If a written contract for a polygraph examiner's services or a waiver of liability is signed by the subject of a polygraph examination, the contract or waiver must inform the subject of the procedures for filing a complaint with the commissioner against the polygraph examiner and contain the name, mailing address and telephone number of the department. [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

SECTION HISTORY
2013, c. 316, §3 (NEW). 2013, c. 316, §5 (AFF).

Subchapter 3: POLYGRAPH EXAMINERS ADVISORY BOARD

§7371. POLYGRAPH EXAMINERS ADVISORY BOARD

1. **Establishment; advise commissioner.** The Polygraph Examiners Advisory Board, as established by Title 5, section 12004-I, subsection 74-H, shall act as an advisory board to the commissioner on issues relating to the licensing and regulation of polygraph examiners.

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

2. **Members.** The board consists of 5 members appointed by the Governor as follows:

A. Two polygraph examiners, each of whom is a polygraph examiner for a state, county or municipal law enforcement agency; [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

B. Two polygraph examiners who are polygraph examiners in a commercial field; and [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

C. One member who represents the public. [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

3. **Residency.** A member of the board must have been a resident of this State for at least 2 years immediately preceding the date of appointment.

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

4. **Active engagement.** Except for the member of the board who represents the public, a member of the board must be actively engaged as a polygraph examiner on the date of appointment to the board.

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

5. **Employment.** No 2 board members may be employed by the same employer.

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

6. **Meetings.** The board shall meet as needed, but at least twice annually.

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

7. **Terms.** Board members serve 3-year terms.

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

8. **Vacancies.** If a vacancy occurs on the board, the Governor shall appoint a successor to fill the unexpired term.

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

9. **Chair.** The board shall select from among its members a chair to serve for a 2-year term.

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

10. **Powers and duties.** The board shall:

A. Advise the commissioner on proposed rules; [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

B. At the request of the commissioner, review written examinations for polygraph examiner license applicants and provide advice regarding polygraph examiner internship requirements; [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

C. At the request of the commissioner, provide advice on granting, suspending and revoking the licenses of polygraph examiners; [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

D. Propose standards governing the conduct of persons licensed under this chapter, which may be incorporated by reference into rules adopted by the commissioner; and [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

E. At the request of the commissioner, provide advice and information on any matters the commissioner determines appropriate or necessary to administer this chapter. [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

SECTION HISTORY
2013, c. 316, §3 (NEW). 2013, c. 316, §5 (AFF).

Subchapter 4: LICENSURE

§7381. LICENSE APPLICATION

1. **Application.** An application for a polygraph examiner license or polygraph examiner intern license must:

A. Be complete and made to the commissioner, in the manner and including the information prescribed by the commissioner; and [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

B. Be accompanied by the required nonrefundable fee. A fee for any license under this chapter may be charged only in an amount reasonably calculated by the commissioner to cover the aggregate costs of the administration of this chapter by the department. [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

2. **Term of polygraph examiner license.** A polygraph examiner license is issued for a 2-year term and may be renewed.

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

3. **Term of polygraph examiner intern license.** A polygraph examiner intern license expires on the first anniversary of the date of issuance and may be renewed once. After the expiration of the original term of a polygraph examiner intern license and renewal of that license granted by the commissioner, an intern may not hold another polygraph examiner intern license before the first anniversary of the date the intern's previous polygraph examiner intern license expired.

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

4. **Sole authority.** The commissioner has sole authority to issue a license under this chapter.

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

SECTION HISTORY
2013, c. 316, §3 (NEW). 2013, c. 316, §5 (AFF).

§7382. QUALIFICATIONS FOR LICENSE

1. **Qualifications.** A person is qualified for a polygraph examiner license if the person:

A. Has not been convicted of a crime for which a license may be denied under Title 5, chapter 341; [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

B. Either:

(1) Holds a baccalaureate degree from a college or university accredited by an organization recognized by the commissioner; or

(2) Has at least 5 years of active investigative experience with an investigative service of the United States as a sworn member of a branch of the United States Armed Forces, a federal investigative agency or a law enforcement agency immediately preceding the date of application; [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

C. Is a graduate of a commissioner-approved polygraph examiner course and has satisfactorily completed at least 6 months of a polygraph examiner internship; and [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

D. Has passed an examination approved by the commissioner to determine the person's competency for a license. [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

2. **Examination.** The commissioner shall provide for an examination for licensure under this chapter to be administered as needed, but at least at 3-month intervals.

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

SECTION HISTORY
2013, c. 316, §3 (NEW). 2013, c. 316, §5 (AFF).

§7383. NONRESIDENT APPLICANT FOR LICENSE

1. **Consent to action.** In addition to meeting all other requirements for a license, an applicant for the issuance or renewal of a polygraph examiner license who is not a resident of this State must file with the commissioner an irrevocable consent to have:

A. An action against the applicant filed in a court in a county or municipality of the state in which:

(1) The plaintiff resides; or

(2) A part of the transaction out of which the alleged cause of action arose occurred; and [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

B. Process in the action under paragraph A served on the applicant by leaving 2 copies of the process with the commissioner. Service of process in the manner described under this paragraph is binding for all purposes. [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

2. Copy to applicant. The commissioner shall immediately send by registered or certified mail a copy of the process under subsection 1, paragraph B to the applicant at the address shown on department records.

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

SECTION HISTORY
2013, c. 316, §3 (NEW). 2013, c. 316, §5 (AFF).

§7384. APPLICANT WITH OUT-OF-STATE LICENSE

The commissioner may grant a license to an applicant who holds a valid license from another state that has license requirements substantially equivalent to or more stringent than those of this State. [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

SECTION HISTORY
2013, c. 316, §3 (NEW). 2013, c. 316, §5 (AFF).

§7385. CONTINUING EDUCATION

A polygraph examiner shall participate in continuing education programs as required by rules of the commissioner. [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

SECTION HISTORY
2013, c. 316, §3 (NEW). 2013, c. 316, §5 (AFF).

§7386. LICENSE HOLDER INFORMATION

A polygraph examiner or intern shall notify the commissioner in writing of a change in the polygraph examiner's or intern's principal business location or residential location not later than the 30th day after the date the change is made. [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

SECTION HISTORY
2013, c. 316, §3 (NEW). 2013, c. 316, §5 (AFF).

§7387. DISPLAY OF LICENSE

A polygraph examiner or intern shall prominently display the polygraph examiner's or intern's license or a copy of the license at the polygraph examiner's or intern's place of business or place of internship, as appropriate. [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

SECTION HISTORY
2013, c. 316, §3 (NEW). 2013, c. 316, §5 (AFF).

§7388. REFUSAL; SUSPENSION; REVOCATION; DISCIPLINARY ACTION; GROUNDS

The commissioner may deny a license, refuse to renew a license, suspend or revoke a license or impose disciplinary or probationary conditions, fines or costs of hearing and investigation on a polygraph examiner or intern, as well as issue a written warning, for: [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

1. **Violation of chapter or rule.** A violation of any provision of this chapter or any rule adopted by the commissioner;

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

2. **Violation of standards of acceptable professional conduct.** A violation of the standards of acceptable professional conduct adopted by rule by the commissioner; or

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

3. **Cause for refusal.** The commission of an act that would have been cause for refusal to issue a license had the act occurred and been known to the commissioner at the time of issuance of a license.

[2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF) .]

A decision to deny, revoke or suspend a license or to impose disciplinary action of any kind under this chapter may be appealed pursuant to the Maine Administrative Procedure Act. [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

SECTION HISTORY
2013, c. 316, §3 (NEW). 2013, c. 316, §5 (AFF).

§7389. SURRENDER OF LICENSE

A polygraph examiner or intern whose license is suspended or revoked by the commissioner shall immediately surrender the license to the commissioner. [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

SECTION HISTORY
2013, c. 316, §3 (NEW). 2013, c. 316, §5 (AFF).

§7390. ADMINISTRATIVE ACTIONS; MAINE ADMINISTRATIVE PROCEDURE ACT

The Maine Administrative Procedure Act applies to and governs all administrative actions taken under this chapter. [2013, c. 316, §3 (NEW); 2013, c. 316, §5 (AFF).]

SECTION HISTORY
2013, c. 316, §3 (NEW). 2013, c. 316, §5 (AFF).

Chapter 87: TRAINING AND CERTIFICATION PROGRAM FOR INSTALLERS OF SOLAR ENERGY EQUIPMENT

§8001. LEGISLATIVE FINDINGS AND INTENT

(REPEALED)

SECTION HISTORY
1979, c. 277, §2 (NEW). 2003, c. 644, §7 (RP).

§8002. INSTALLATION TRAINING

(REPEALED)

SECTION HISTORY
1979, c. 277, §2 (NEW). 1989, c. 501, §DD37 (AMD). 2003, c. 644, §7 (RP).

§8003. INSTALLER CERTIFICATION

(REPEALED)

SECTION HISTORY
1979, c. 277, §2 (NEW). 1981, c. 61, §2 (AMD). 1983, c. 553, §46 (AMD). 1989, c. 501, §DD38 (AMD). 2003, c. 644, §7 (RP).

§8003-A. FEES

(REPEALED)

SECTION HISTORY
1981, c. 61, §3 (NEW). 1983, c. 553, §46 (AMD). 2003, c. 644, §7 (RP).

§8004. REVOCATION OR SUSPENSION OF CERTIFICATION

(REPEALED)

SECTION HISTORY
1979, c. 277, §2 (NEW). 1981, c. 61, §4 (AMD). 1983, c. 553, §46 (AMD). 1989, c. 501, §DD39 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2003, c. 644, §7 (RP).

§8005. PENALTY PROVISIONS

(REPEALED)

SECTION HISTORY
1979, c. 277, §2 (NEW). 2003, c. 644, §7 (RP).

§8006. RENEWALS

(REPEALED)

SECTION HISTORY
1981, c. 61, §5 (NEW). 1983, c. 553, §46 (AMD). 2003, c. 644, §7 (RP).

Chapter 88: VOLUNTARY CERTIFICATION PROGRAM FOR ENERGY AUDITORS

§8021. LEGISLATIVE FINDINGS AND INTENT

(REPEALED)

SECTION HISTORY
1981, c. 597, (NEW). 2003, c. 644, §7 (RP).

§8022. DEFINITIONS

(REPEALED)

SECTION HISTORY
1981, c. 597, (NEW). 2003, c. 644, §7 (RP).

§8023. CERTIFICATION

(REPEALED)

SECTION HISTORY
1981, c. 597, (NEW). 1989, c. 501, §DD40 (AMD). 2003, c. 644, §7 (RP).

§8024. FEES

(REPEALED)

SECTION HISTORY
1981, c. 597, (NEW). 1989, c. 501, §DD41 (AMD). 2003, c. 644, §7 (RP).

§8025. REVOCATION, SUSPENSION OR NONRENEWAL OF CERTIFICATION

(REPEALED)

SECTION HISTORY
1981, c. 597, (NEW). 1989, c. 501, §DD42 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2003, c. 644, §7 (RP).

§8026. PENALTY PROVISIONS

(REPEALED)

SECTION HISTORY
1981, c. 597, (NEW). 2003, c. 644, §7 (RP).

§8027. RENEWALS

(REPEALED)

SECTION HISTORY
1981, c. 597, (NEW). 1989, c. 501, §DD43 (AMD). 2003, c. 644, §7 (RP).

§8028. RULES

(REPEALED)

SECTION HISTORY
1981, c. 597, (NEW). 1989, c. 501, §DD44 (AMD). 2003, c. 644, §7 (RP).

Chapter 89: PROFESSIONAL INVESTIGATORS

§8101. SHORT TITLE

This chapter is known and may be cited as the Professional Investigators Act. [2011, c. 366, §6 (AMD).]

SECTION HISTORY
1981, c. 126, §2 (NEW). 2011, c. 366, §6 (AMD).

§8102. PURPOSE

The purpose of this chapter is to regulate any person, firm, corporation or other legal entity engaged in the business of private investigation. [2011, c. 366, §7 (AMD).]

SECTION HISTORY
1981, c. 126, §2 (NEW). 2011, c. 366, §7 (AMD).

§8103. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1981, c. 126, §2 (NEW).]

1. **Commissioner.**

[2011, c. 366, §8 (RP) .]

1-A. **Board.** "Board" means the Board of Licensure of Professional Investigators under section 8103-A, as established under Title 5, section 12004-G, subsection 29-D.

[2011, c. 366, §9 (NEW) .]

1-B. **Chief.** "Chief" means the Chief of the State Police or the chief's designee.

[2011, c. 366, §10 (NEW) .]

1-C. **Computer forensics.** "Computer forensics" means the use of digital forensic science that involves the examination of digital media to identify, preserve, recover and analyze information related to legal matters.

[2011, c. 366, §11 (NEW) .]

2. **Investigative assistant.** "Investigative assistant" means a person who acts as a professional investigator under the supervision of a licensed professional investigator in accordance with this chapter.

[2011, c. 366, §12 (AMD) .]

3. **Licensee.** "Licensee" means any person licensed under this chapter as a professional investigator or investigative assistant.

[2011, c. 366, §13 (AMD) .]

4. **Person.** "Person" means any natural person, firm, association, partnership, corporation, government agency or subdivision, or any employee or agent thereof.

[1981, c. 126, §2 (NEW) .]

4-A. **Private investigation.** "Private investigation" means for any consideration whatsoever, to agree to obtain, or to in fact obtain information with reference to any of the following:

A. A crime or other act committed or threatened against the laws or government of the United States, any state or territory or any political subdivision of a state or territory; [2011, c. 366, §14 (NEW).]

B. The identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation or character of any person; [2011, c. 366, §14 (NEW).]

C. The cause of or responsibility for libels, fires, losses, accidents or damage or injury to persons or property; [2011, c. 366, §14 (NEW).]

D. The location, disposition or recovery of lost or stolen property; [2011, c. 366, §14 (NEW).]

E. Evidence to be used before a court, board, officer or investigative committee, including evidence derived through computer forensics; or [2011, c. 366, §14 (NEW).]

F. The detection of surreptitiously installed devices designed for eavesdropping or observation, or both, for video and audio devices. [2011, c. 366, §14 (NEW).]

[2011, c. 366, §14 (NEW) .]

5. **Professional investigator.** "Professional investigator" means any person who engages in or solicits business or accepts employment to conduct private investigations.

A. [2011, c. 366, §15 (RP).]

B. [2011, c. 366, §15 (RP).]

C. [2011, c. 366, §15 (RP).]

D. [2011, c. 366, §15 (RP).]

E. [2011, c. 366, §15 (RP).]

[2011, c. 366, §15 (RPR) .]

SECTION HISTORY
1981, c. 126, §2 (NEW). 2001, c. 298, §1 (AMD). 2011, c. 366, §§8-15 (AMD).

§8103-A. BOARD OF LICENSURE OF PROFESSIONAL INVESTIGATORS

1. **Establishment.** The Board of Licensure of Professional Investigators, referred to in this chapter as "the board," is established pursuant to Title 5, section 12004-G, subsection 29-D to administer the provisions of this chapter to protect the public by improving the standards relative to the practice of private investigation and to protect the public from unqualified practitioners.

[2011, c. 366, §16 (NEW) .]

2. **Duties.** The board has the following powers and duties:

A. To provide advice regarding rules proposed by the chief; [2011, c. 366, §16 (NEW).]

B. At the request of the chief, to review written examinations for professional investigator applicants; [2011, c. 366, §16 (NEW).]

C. At the request of the chief, to advise the chief on granting, suspending and revoking the licenses of professional investigators; [2011, c. 366, §16 (NEW).]

D. To establish standards governing the safety and conduct of persons licensed under this chapter; [2011, c. 366, §16 (NEW).]

E. To recommend investigations regarding alleged violations of the provisions of this chapter and any rules adopted by the chief; and [2011, c. 366, §16 (NEW).]

F. To provide information to the chief on any matter as the board determines appropriate or necessary. [2011, c. 366, §16 (NEW).]

[2011, c. 366, §16 (NEW) .]

3. **Members.** The board consists of 7 members who must be residents of the State and are appointed by the Governor as follows:

A. Two members of the State Police recommended by the chief; [2011, c. 366, §16 (NEW).]

B. One member recommended by the Attorney General; [2011, c. 366, §16 (NEW).]

C. Three members of the public, with no more than 2 holding a license under this chapter, to be appointed to reflect a wide diversity of private investigation experience. At least one member must be chosen for the member's expertise in operating a private investigation company in this State and must have a minimum of 5 years of experience as a licensed private investigator; and [2011, c. 366, §16 (NEW).]

D. One administrator from a local or county law enforcement agency. [2011, c. 366, §16 (NEW).]

[2011, c. 366, §16 (NEW) .]

4. **Terms; removal.** Terms of the members of the board are for 3 years. The terms are governed by Title 10, section 8009. Members may be removed by the Governor for cause.

[2011, c. 366, §16 (NEW) .]

5. **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. Four members of the board constitute a quorum.

[2011, c. 366, §16 (NEW) .]

SECTION HISTORY
2011, c. 366, §16 (NEW).

§8104. LICENSE REQUIREMENT; EXCEPTIONS

1. **License.** A person may not act as a professional investigator without first obtaining from the chief a license to be a professional investigator or investigative assistant.

[2011, c. 366, §17 (AMD) .]

2. **Exceptions.** This section does not apply to the following:

A. A person employed by or on behalf of the Federal Government, any state or any political subdivision or public instrumentality or a Canadian province, while in the performance of the person's official duties; [2011, c. 366, §18 (AMD).]

B. [2011, c. 366, §19 (RP).]

C. A person employed to inquire into the fitness of an applicant for employment with that person's employer; [1981, c. 126, §2 (NEW).]

D. A credit reporting bureau or agency, or agent thereof, whose business is the furnishing of information concerning a person's business, financial or credit standing; [1981, c. 126, §2 (NEW).]

E. An insurance company investigating the personal habits and financial responsibility of applicants for insurance or indemnity bonds; [2011, c. 366, §20 (AMD).]

F. An attorney admitted to practice law in the State acting in a professional capacity; [2011, c. 366, §21 (AMD).]

G. A nonprofit trade or business association, board or organization, whether incorporated or unincorporated, or any agent thereof, conducting an investigation for the following purposes:

(1) To furnish to members of the association, board or organization, information concerning the business, financial or credit standing or the reputation of a person with whom the members consider doing business; provided that the investigation is no more extensive than is reasonably necessary; or

(2) To compile or disseminate statistics or data relating to business of the members of the association, board or organization; [1981, c. 126, §2 (NEW).]

H. An insurance adjuster, or an employee investigating claims for or against the employee's employer; [2011, c. 366, §22 (AMD).]

I. A person engaged in compiling genealogical information or otherwise tracing lineage or ancestry, by primarily using public records and historical information or databases; [2011, c. 366, §23 (AMD).]

J. A person possessing a valid private investigator's license granted under any prior existing provision of law of this State, as long as, upon expiration of the license, the person is governed by this section; [2011, c. 366, §24 (AMD).]

K. A person employed exclusively and regularly by an employer in connection with the affairs of the employer only, and there exists a bona fide employer-employee relationship in which the employee is reimbursed on an hourly basis; [2011, c. 366, §25 (RPR).]

L. A person acting within the scope of the person's professional practice to analyze facts, evidence or other data for the purposes of supplying expert testimony in a legal proceeding; or [2011, c. 366, §26 (NEW).]

M. An Internet research company or an individual who is solely engaged in the retrieval of data from an online source or database and who does not question individuals in person, by phone or by electronic means, when those electronic means are used as a tool to gather information for a fee. [2011, c. 366, §27 (NEW).]

[2011, c. 366, §§18-27 (AMD) .]

SECTION HISTORY
1981, c. 126, §2 (NEW). 2011, c. 366, §§17-27 (AMD).

§8105. PRIVATE INVESTIGATOR'S LICENSE QUALIFICATIONS

A person is qualified to be licensed as a professional investigator who: [2011, c. 366, §28 (AMD).]

1. **Age.** Is at least 21 years of age;

[2011, c. 366, §29 (AMD) .]

2. **Citizenship.** Is a citizen or resident alien of the United States;

[1981, c. 126, §2 (NEW) .]

3. **Graduation.** Is a graduate of an accredited high school or has been granted high school equivalency status by the State;

[1981, c. 126, §2 (NEW) .]

4. **Character.** Has demonstrated good moral character and has not been convicted of a crime that is punishable by a maximum term of imprisonment equal to or exceeding one year, or a crime enumerated in this chapter. The determination of good moral character must be made in writing, based upon evidence recorded by a governmental entity. The chief shall consider matters recorded within the previous 5 years including, but not limited to, the following:

A. Records of incidents of abuse by the applicant of family or household members provided pursuant to Title 19-A, section 4012, subsection 1; [1995, c. 694, Pt. D, §56 (AMD); 1995, c. 694, Pt. E, §2 (AFF).]

B. Records provided by the Department of Health and Human Services regarding the failure of the applicant to meet child or family support obligations; [1981, c. 126, §2 (NEW); 2003, c. 689, Pt. B, §6 (REV).]

C. Records of 3 or more convictions of the applicant for Class D or E crimes; [1981, c. 126, §2 (NEW).]

D. Records of 3 or more civil violations by the applicant; or [2011, c. 366, §30 (AMD).]

E. Records that the applicant has engaged in recklessness or negligence that endangered the safety of others, including the use of weapons or motor vehicles; [1981, c. 126, §2 (NEW).]

[2011, c. 366, §30 (AMD) .]

5. **Application.** Submits an application approved by the chief that, at a minimum, includes the following information:

A. The applicant's full name; [2011, c. 366, §31 (AMD).]

B. The applicant's full current residential address and the applicant's residential addresses during the previous 5 years; [2011, c. 366, §31 (AMD).]

C. The applicant's date and place of birth, height, weight and color of eyes; [2011, c. 366, §31 (AMD).]

D. A written statement signed by the applicant granting the chief authority to check the criminal records of any law enforcement agency that pertains to any matter involving the applicant. The applicant must agree to submit to having the applicant's fingerprints taken by the issuing authority if it becomes necessary to resolve any question as to the applicant's identity; and [2011, c. 366, §31 (AMD).]

E. The answers to the following questions:

(1) Are you currently under indictment or information for a crime for which the possible penalty is imprisonment for a period equal to or exceeding one year?

(2) Have you ever been convicted of a crime for which the possible penalty was imprisonment for a period equal to or exceeding one year?

(3) Are you a fugitive from justice?

(4) Are you an unlawful user of or addicted to marijuana or any other drug?

(5) Have you been adjudged mentally defective or been committed to a mental institution within the past 5 years? or

(6) Are you an illegal alien? [2011, c. 366, §31 (AMD).]

By affixing the applicant's signature, the applicant certifies that the information in the application provided by the applicant is true and correct, that the applicant understands that an affirmative answer to any of the questions in paragraph E is cause for a license to be denied and that any false statement may result in prosecution as provided in section 8114.

[2011, c. 366, §31 (AMD) .]

6. **Military discharge.** Has not been dishonorably discharged from military service;

[1981, c. 126, §2 (NEW) .]

7. **Employment.**

[1985, c. 141, §1 (RP) .]

7-A. **Experience.** Meets at least one of the following criteria:

A. Has successfully completed an investigative assistant sponsorship program pursuant to section 8110-B and has earned a minimum of 60 academic credits of postsecondary education in a related field of study or an equivalent certificate of study for private investigation; [2011, c. 366, §32 (AMD).]

B. Has been employed for a minimum of 3 years as a member of an investigative service of the United States as a sworn member of a branch of the United States Armed Forces or a federal investigative agency. For purposes of this paragraph, "a member of an investigative service of the United States" means a full-time federal investigator or detective of the United States Armed Forces; [2011, c. 691, Pt. D, §11 (AMD).]

B-1. Has held for a period of not less than 3 years a valid professional investigator's license granted under the laws of another state or territory of the United States if:

(1) The requirements of the state or territory for a professional investigator's license were, at the date of the licensing, substantially equivalent to the requirements of this chapter; and

(2) The other state or territory grants similar reciprocity to license holders in this State; [2011, c. 366, §32 (NEW).]

C. Has been employed for a minimum of 3 years as a law enforcement officer of a state or political subdivision of a state and has met the training requirements set forth in Title 25, section 2804-C or is qualified to receive a waiver from those requirements; or [2011, c. 366, §32 (AMD).]

D. Possesses a minimum of 6 years of preparation consisting of a combination of:

(1) Work experience, including at least 2 years in a nonclerical occupation related to law or the criminal justice system; and

(2) Educational experience, including at least:

(a) Sixty academic credits of postsecondary education in a field of study listed in division (b) acquired at an accredited junior college, college or university;

(b) An associate degree acquired at an accredited junior college, college, university or technical college in police administration, security management, investigation, law, criminal justice or computer forensics or other similar course of study acceptable to the chief; or

(c) An associate degree in any field of study that is acceptable to the chief; and [2011, c. 366, §32 (AMD).]

[2011, c. 691, Pt. D, §11 (AMD) .]

8. **Examination.** Has passed an examination administered by the chief covering subjects pertaining to private investigation to be prescribed by the chief, except that a person currently licensed, as described in section 8106, may at no time be required to take any such examination.

[2011, c. 366, §33 (AMD) .]

SECTION HISTORY
1981, c. 126, §2 (NEW). 1985, c. 141, §§1,2 (AMD). 1987, c. 602, §2 (AMD). 1989, c. 443, §90 (AMD). RR 1991, c. 2, §118 (COR). 1995, c. 694, §D56 (AMD). 1995, c. 694, §E2 (AFF). 2001, c. 298, §§2,3 (AMD). 2003, c. 689, §B6 (REV). 2009, c. 20, §1 (AMD). 2011, c. 366, §§28-33 (AMD). 2011, c. 691, Pt. D, §11 (AMD).

§8106. ACQUISITION OF LICENSE BY PERSONS CURRENTLY LICENSED

A person possessing, under Maine law, a valid private investigator's license on the effective date of this chapter whose license then expires, by application, compliance with section 8105, subsection 8 and payment of the required fee, is entitled to a professional investigator's license. [2011, c. 366, §34 (AMD).]

SECTION HISTORY
1981, c. 126, §2 (NEW). 2011, c. 366, §34 (AMD).

§8107. APPLICATION FOR ORIGINAL LICENSE

Applications for original licenses must be made to the chief under oath on forms prescribed by the chief demonstrating the qualifications required under this chapter. The application must be accompanied by the fee required under section 8117 and by a certification by each of 3 reputable citizens of the State of the following: [2011, c. 366, §35 (AMD).]

1. **Residence.** That the reputable citizen resides in the community in which the applicant resides, has a place of business or proposes to conduct the applicant's private investigation business;

[2011, c. 366, §35 (AMD) .]

2. **Knowledge of applicant.** That the reputable citizen has personally known the applicant for at least 3 years;

[2011, c. 366, §35 (AMD) .]

3. **Relation to applicant.** That the reputable citizen is not related to the applicant by blood or marriage;

[2011, c. 366, §35 (AMD) .]

4. **Character of applicant.** That the applicant is honest and of good moral character; and

[1981, c. 126, §2 (NEW) .]

5. **Truth of statements in application.** That the reputable citizen has read the application and believes each statement in it to be true.

[2011, c. 366, §35 (AMD) .]

SECTION HISTORY
1981, c. 126, §2 (NEW). 2011, c. 366, §35 (AMD).

§8108. APPLICANT WITH OUT-OF-STATE LICENSE

(REPEALED)

SECTION HISTORY
1981, c. 126, §2 (NEW). 2011, c. 366, §36 (RP).

§8109. RENEWAL OF LICENSE

Each professional investigator's license is valid for an initial term of 2 years. Unless the license is revoked, the licensee may apply to renew the license every 4 years after the initial term. [2011, c. 366, §37 (AMD).]

SECTION HISTORY
1981, c. 126, §2 (NEW). 1991, c. 780, §H1 (AMD). 2003, c. 620, §1 (AMD). 2011, c. 366, §37 (AMD).

§8110. INVESTIGATIVE ASSISTANT'S LICENSE

1. **Qualifications.** A person is qualified to be licensed as an investigative assistant who meets the qualifications set forth in section 8105, subsections 1 through 6.

[1981, c. 126, §2 (NEW) .]

2. **Application.** An application for an investigative assistant's license must be made to the chief in accordance with the requirements of section 8105, subsection 5 and section 8107. The application must be accompanied by the fee required under section 8117.

[2011, c. 366, §38 (AMD) .]

3. **Term of license.** The investigative assistant's license is valid for 2 years from the date of issuance and is not renewable. To qualify for a license as a professional investigator, within those 2 years the investigative assistant must complete 1,200 hours of training.

[2011, c. 366, §39 (AMD) .]

4. **Sponsor.** An investigative assistant may engage in the business of private investigating only when sponsored by a professional investigator licensed under this chapter.

[2011, c. 366, §40 (NEW) .]

SECTION HISTORY
1981, c. 126, §2 (NEW). 1983, c. 221, §1 (AMD). 2003, c. 620, §2 (AMD). 2011, c. 366, §§38-40 (AMD).

§8110-A. EMPLOYMENT OF INVESTIGATIVE ASSISTANT

A professional investigator duly licensed under this chapter whose primary place of business is located in the State may employ an investigative assistant pursuant to section 8110-B subject to the following: [2011, c. 366, §41 (AMD).]

1. **Limit on number of investigative assistants.** No more than one investigative assistant is employed at one time; and

[2011, c. 366, §41 (AMD) .]

2. **Investigative assistant to be licensed.** The investigative assistant is licensed under this chapter.

[2011, c. 366, §41 (AMD) .]

SECTION HISTORY
1985, c. 207, §1 (NEW). 2011, c. 366, §41 (AMD).

§8110-B. SPONSORSHIP OF INVESTIGATIVE ASSISTANT

1. **Supervision and documentation of investigative assistant's activities.** The sponsoring professional investigator is responsible for overseeing and documenting the activities of the investigative assistant under the sponsoring professional investigator's supervision, including:

A. Keeping a record of all 1,200 training hours, including hours worked on specific activities performed by the investigative assistant; and [2011, c. 366, §42 (NEW).]

B. Providing specific training in areas determined by the chief by rule. [2011, c. 366, §42 (NEW).]

[2011, c. 366, §42 (NEW) .]

2. **Distribute materials.** The holder of an investigative assistant's license may not obtain or distribute any materials, such as a business card, letterhead, invoice or brochure, in any name other than that of the sponsoring professional investigator.

[2011, c. 366, §42 (NEW) .]

3. **Termination of investigative assistant.** A duly licensed professional investigator who terminates the sponsorship of a licensed investigative assistant must notify the chief of the termination immediately. The notification must be in writing and contain the cause of the termination. The chief shall immediately notify the investigative assistant that the investigative assistant must cease all licensed activity.

[2011, c. 366, §42 (NEW) .]

SECTION HISTORY
2011, c. 366, §42 (NEW).

§8111. BONDING AND INSURANCE REQUIREMENTS

1. **Bonding requirement.** A person licensed as a professional investigator shall give to the chief a bond in the sum of $10,000 if the licensee is a resident of the State and in the sum of $50,000 if the licensee is not a resident of the State.

A person licensed as an investigative assistant shall give to the chief a bond in the sum of $20,000.

[2011, c. 366, §43 (AMD) .]

2. **Form of a bond.** Each bond must:

A. Be in a form prescribed by the chief; [2011, c. 366, §43 (AMD).]

B. Be executed by the licensee as principal and by a surety company authorized to do business in this State as surety; and [1981, c. 126, §2 (NEW).]

C. Be conditioned upon the honest conduct of the business of the licensee and the right of any person, including the officer of any aggrieved labor union or association, whether or not incorporated, injured by the intentional, knowing, reckless or negligent act of the licensee to bring, in the licensee's own name, an action on the bond. [2011, c. 366, §43 (AMD).]

[2011, c. 366, §43 (AMD) .]

3. **Insurance requirement.** A person licensed as a professional investigator shall provide to the chief proof of insurance naming the licensee as the insured issued by an insurer authorized to do business in the State in the amount of a minimum of $10,000 in property damages, $100,000 for injury or death of a person and $200,000 for injuries to or deaths of more than one person arising out of the operation of the licensed activity. Proof of insurance must be submitted to the chief annually.

[2011, c. 366, §43 (NEW) .]

SECTION HISTORY
1981, c. 126, §2 (NEW). 2011, c. 366, §43 (AMD).

§8112. INELIGIBILITY OF PUBLIC OFFICIALS

No person is eligible for a license under this chapter who derives plenary or special law enforcement powers from the State or any political subdivision thereof. [1981, c. 126, §2 (NEW).]

SECTION HISTORY
1981, c. 126, §2 (NEW).

§8113. REFUSAL; SUSPENSION; REVOCATION; GROUNDS

In accordance with the Maine Administrative Procedure Act, the chief may refuse to issue or renew a license, suspend or revoke the license of any person licensed under this chapter, impose probationary conditions, fines or costs of hearing and investigation or issue a written warning on the following grounds: [2011, c. 366, §44 (AMD).]

1. **Fraud or deceit.** The practice of fraud or deceit in obtaining a license under this chapter or in connection with service rendered within the scope of the license issued;

[1985, c. 207, §2 (RPR) .]

2. **Conviction of certain crimes.** Conviction of a crime that involves dishonesty or false statement or that relates directly to the practice for which the licensee is licensed or that is enumerated in this chapter or conviction of any crime for which incarceration for one year or more may be imposed;

[2011, c. 366, §44 (AMD) .]

3. **Violation of chapter or rule.** Any violation of this chapter or any rule adopted by the chief;

[2011, c. 366, §44 (AMD) .]

4. **Aiding or abetting unlicensed practice of private investigation.** Aiding or abetting the practice of private investigation by a person not duly licensed under this chapter and who represents to others that the person is duly licensed;

[2011, c. 366, §44 (AMD) .]

5. **Failure to maintain bond and insurance.** Failure to maintain a bond and insurance as required by section 8111;

[2011, c. 366, §44 (AMD) .]

6. **Incompetence.** Incompetence in the practice for which the person is licensed. A licensee is considered incompetent in the practice if the licensee has:

A. Engaged in conduct that evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client or the general public; or [2011, c. 366, §44 (AMD).]

B. Engaged in conduct that evidences a lack of knowledge or an inability to apply principles or skills to carry out the practice for which the person is licensed; [2011, c. 366, §44 (AMD).]

[2011, c. 366, §44 (AMD) .]

7. **Employment of prohibited person.** Employment, in connection with a private investigation business, in any capacity, of any person who has been convicted of a crime punishable by imprisonment for one year or more or any former licensee whose license has been revoked;

[2011, c. 161, §1 (AMD) .]

8. **Representations that licensee is sworn peace officer.** Representation by the licensee that suggests, or that would reasonably cause another person to believe, that the licensee is a sworn peace officer of this State, any political subdivision of this State, any other state or the Federal Government;

[2011, c. 691, Pt. A, §36 (AMD) .]

9. **Unpermitted contact with a child.** Contact or communication with a child who has not attained 14 years of age regarding a private investigation if that contact or communication includes conduct with the intent to harass, torment, intimidate or threaten a child;

[2011, c. 691, Pt. A, §37 (AMD) .]

10. **Misstatement.** Intentionally or knowingly making a material misstatement in filing an application for a license or renewal of a license;

[2011, c. 366, §44 (NEW) .]

11. **Violation of standards of acceptable professional conduct.** A violation of the standards of acceptable professional conduct adopted by rule by the chief; or

[2011, c. 366, §44 (NEW) .]

12. **Cause for refusal.** Committing an act that would have been cause for the refusal to issue a license had the act occurred and been known to the chief at the time of issuance of a license.

[2011, c. 366, §44 (NEW) .]

The chief may reconsider, modify or reverse probation, suspension or other disciplinary action. [2011, c. 366, §44 (NEW).]

SECTION HISTORY
1981, c. 126, §2 (NEW). 1981, c. 698, §164 (AMD). 1985, c. 207, §2 (RPR). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2001, c. 298, §§4,5 (AMD). 2011, c. 161, §§1-3 (AMD). 2011, c. 366, §44 (AMD). 2011, c. 691, Pt. A, §§36, 37 (AMD).

§8113-A. SUSPENSION FOR REFUSAL

1. **Immediate suspension.** If the chief has probable cause to believe that a person licensed pursuant to this chapter is required to submit to chemical testing for the presence of intoxicating liquor or drugs pursuant to Title 17-A, section 1057 or for conduct that occurs while the licensee is in possession of a loaded firearm and the licensee refuses to submit to the required testing, the chief shall immediately suspend the licensee's right to carry a concealed handgun.

[2013, c. 424, Pt. A, §16 (AMD) .]

2. **Report to chief.** A law enforcement officer who has probable cause to require chemical testing of a licensee shall promptly notify the chief of a licensee's refusal and provide the chief with a report of the facts and circumstances of the requirement to submit to chemical testing and of the licensee's refusal.

[2011, c. 366, §45 (AMD) .]

3. **Suspension in effect during pendency.** A suspension remains in effect until the entry of judgment if charges are filed of violating Title 17-A, section 1057 or of operating a motor vehicle, snowmobile, ATV or watercraft under the influence of intoxicating liquor or drugs, unless it is determined by the court in which the criminal charge or civil violation is pending, or by the Secretary of State if a hearing is held pursuant to Title 29-A, section 2483, that the law enforcement officer did not have probable cause to require the licensee to submit to chemical testing.

[2011, c. 366, §45 (AMD) .]

SECTION HISTORY
1989, c. 917, §17 (NEW). 1995, c. 65, §A132 (AMD). 1995, c. 65, §§A153,C15 (AFF). 2011, c. 366, §45 (AMD). 2013, c. 424, Pt. A, §16 (AMD).

§8114. UNLAWFUL ACTS

A person is guilty of improper conduct in private investigation if the person commits any of the acts described in this section. Improper conduct in private investigation is a Class D crime. [2011, c. 366, §46 (NEW).]

1. **Acting without license; false representation.** A person acts without a license or commits false representation if that person intentionally or knowingly:

A. Except as provided in section 8104, acts as a professional investigator without a valid license; [2011, c. 366, §46 (AMD).]

B. Falsely represents that the person is the holder of a valid license; [2011, c. 366, §46 (AMD).]

C. Falsely represents that any person in the person's employ is a professional investigator or investigative assistant; or [2011, c. 366, §46 (AMD).]

D. Makes any false statements or material omission in any application filed with the chief. [2011, c. 366, §46 (AMD).]

[2011, c. 366, §46 (AMD) .]

2. **Representation as peace officer; employment of certain convicted persons; failure to surrender license.** A licensed professional investigator or investigative assistant commits misrepresentation as a peace officer, employment of a certain convicted person or failing to surrender if that professional investigator or investigative assistant intentionally or knowingly:

A. Makes any representation, including, but not limited to, presentation of a badge, that suggests, or that would reasonably cause another person to believe, that the licensed professional investigator or investigative assistant is a sworn peace officer of this State, any political subdivision of this State, any other state or the Federal Government; [2011, c. 366, §46 (AMD).]

B. Employs, in connection with a private investigation business, in any capacity, a former licensee whose license has been revoked or a person who has been convicted of :

(1) A crime in this State that is punishable by imprisonment for a term exceeding one year or more;

(2) A crime under the laws of the United States that is punishable by imprisonment for a term exceeding one year;

(3) A crime under the laws of another state that, in accordance with the laws of that jurisdiction, is punishable by a term of imprisonment exceeding one year. This subparagraph does not include a crime under the laws of another state that is classified by the laws of that state as a misdemeanor and is punishable by a term of imprisonment of 2 years or less; or

(4) A crime under the laws of another state that, in accordance with the laws of that jurisdiction, does not come within subparagraph (3) but is elementally substantially similar to a crime in this State that is punishable by a term of imprisonment for one year or more; or [2011, c. 366, §46 (AMD).]

C. Fails or refuses to surrender the professional investigator's license to the chief following revocation or suspension. [2011, c. 366, §46 (AMD).]

[2011, c. 366, §46 (AMD) .]

3. **Employing unlicensed individual.** A licensed professional investigator commits improper employment conduct if the professional investigator intentionally or knowingly employs or engages any other person to act as a professional investigator unless the person so employed or engaged is licensed as a professional investigator or investigative assistant.

[2011, c. 366, §46 (AMD) .]

4. **Failure of assistant to return equipment.**

[2011, c. 366, §46 (RP) .]

5. **Other unlawful acts.** A person licensed under this chapter or any person employed by the person commits improper investigative conduct if that person intentionally or knowingly:

A. Incites, encourages or aids any person who has become a party to any strike to commit any unlawful act against any person or property; [2011, c. 366, §46 (AMD).]

B. Incites, stirs up, creates or aids in the inciting of discontent or dissatisfaction among the employees of any person with the intention of having them strike; [2011, c. 366, §46 (AMD).]

C. Interferes with or prevents lawful and peaceful picketing during strikes; [2011, c. 366, §46 (AMD).]

D. Interferes with, restrains or coerces employees in the exercise of their right to form, join or assist any labor organization of their choosing; [2011, c. 366, §46 (AMD).]

E. Interferes with or hinders lawful or peaceful collective bargaining between employers and employees; [2011, c. 366, §46 (AMD).]

F. Pays or offers to give any money, gratuity, consideration or other thing of value, directly or indirectly, to any person for any verbal or written report of the lawful activities of employees in the exercise of their right to organize, form or assist any labor organization and to bargain collectively through representatives of their choosing; [2011, c. 366, §46 (AMD).]

G. Advertises for, recruits, furnishes or replaces or offers to furnish or replace for hire or reward, within or outside the State, any skilled or unskilled help or labor, armed guards, other than armed guards employed for the protection of payrolls, property or premises, for service upon property that is being operated in anticipation of or during the course of a strike; [2011, c. 366, §46 (AMD).]

H. Furnishes armed guards upon the highways for persons involved in labor disputes; [2011, c. 366, §46 (AMD).]

I. Furnishes or offers to furnish to employers or their agents any arms, munitions, tear gas implements or any other weapons; [2011, c. 366, §46 (AMD).]

J. Sends letters or literature to employers offering to eliminate labor unions; or [2011, c. 366, §46 (AMD).]

K. Advises any person of the membership of an individual in a labor organization for the purpose of preventing that individual from obtaining or retaining employment. [2011, c. 366, §46 (AMD).]

[2011, c. 366, §46 (AMD) .]

SECTION HISTORY
1981, c. 126, §2 (NEW). RR 2003, c. 2, §98 (COR). 2003, c. 620, §3 (AMD). 2011, c. 366, §46 (AMD).

§8114-A. COMPLAINT INVESTIGATION; DISCIPLINARY ACTIONS

1. **Complaint investigation.** The chief shall investigate a complaint, on the chief's own motion or upon receipt of a written complaint filed with the chief, regarding noncompliance with or violation of this chapter or of rules adopted by the chief. The chief may adopt rules regarding the receipt and investigation of complaints. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

The chief shall notify the licensee of the content of the complaint filed against the licensee as soon as possible, but not less than 60 days after receipt of the information. The licensee shall respond within 30 days. If the chief determines that a violation took place but was not of a serious nature, the chief may issue a written warning to the licensee. A copy of the warning and licensee's response to the complaint must be placed in the licensee's permanent file.

The licensee may, within 30 days of receipt of a warning, file a request for a hearing. Upon receipt of the request, the chief shall set aside the written warning and set the matter for hearing in accordance with the provisions of the Maine Administrative Procedure Act.

[2011, c. 366, §47 (NEW) .]

2. **Hearing.** If an investigation under subsection 1 reveals evidence supporting the complaint, the chief shall set the matter for hearing in accordance with the provisions of the Maine Administrative Procedure Act before suspending or revoking a license or imposing probationary or supervisory conditions or a fine.

[2011, c. 366, §47 (NEW) .]

3. **Aggrieved by disciplinary action.** A licensee aggrieved by a disciplinary action of the chief may bring an appeal in accordance with the Maine Administrative Procedure Act.

[2011, c. 366, §47 (NEW) .]

4. **Voluntary compliance.** At any time during the investigative or hearing process under this section, the chief may accept an assurance of voluntary compliance from the licensee if the assurance effectively deals with the complaint.

[2011, c. 366, §47 (NEW) .]

SECTION HISTORY
2011, c. 366, §47 (NEW).

§8115. IDENTIFICATION CARDS; BADGES PROHIBITED

1. **Issuance of identification cards.** The chief shall design and issue to each person licensed under this chapter an identification card featuring a recent photograph of the licensee.

[2011, c. 366, §48 (NEW) .]

2. **Use of badges prohibited.** A person licensed under this chapter may not carry or present a badge that suggests, or that would reasonably cause another person to believe, that the licensed professional investigator or investigative assistant is a sworn peace officer of this State, any political subdivision of this State, any other state or the Federal Government.

[2011, c. 366, §48 (NEW) .]

SECTION HISTORY
1981, c. 126, §2 (NEW). 2011, c. 366, §48 (RPR).

§8116. POWERS OF THE CHIEF

1. **Subpoenas.** In any investigation conducted by the chief under this chapter, the chief may issue subpoenas to compel the attendance of witnesses and the production of evidence relevant to any fact in issue.

[2011, c. 366, §49 (AMD) .]

2. **Contempt.** If a witness refuses to obey a subpoena or to give any evidence relevant to proper inquiry by the chief, the Attorney General may petition the Superior Court in the county where the refusal occurred to find the witness in contempt. The Attorney General shall cause to be served on that witness an order requiring the witness to appear before the Superior Court to show cause why the witness should not be adjudged in contempt. The court shall, in a summary manner, hear the evidence and, if it is such as to warrant the witness in doing so, punish that witness in the same manner and to the same extent as for contempt committed before the Superior Court or with reference to the process of the Superior Court.

[2011, c. 366, §49 (AMD) .]

3. **Rules.** The chief with the advice of the board may adopt rules necessary to administer this chapter, including, but not limited to, rules regarding standards of acceptable professional conduct and training requirements for and sponsorship of investigative assistants. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2011, c. 366, §49 (AMD) .]

SECTION HISTORY
1981, c. 126, §2 (NEW). 2011, c. 366, §49 (AMD).

§8117. FEES

1. **Amount.** The fee for an original biennial license is $500, of which $50 must be submitted with the application and $450 must be submitted upon issuance of the license. The fee for a 4-year renewal is $500, which is refundable upon denial of renewal. The fee for an investigative assistant's license is $600, of which $200 must be submitted with the application and $400 must be submitted upon issuance of the license.

[2011, c. 366, §50 (AMD) .]

2. **Expiration.** If a previously issued license has expired and not been renewed within a period of 60 days, the application must be considered the original application and the same fees and all requirements of an original application apply.

[2011, c. 366, §50 (AMD) .]

3. **Expenses.** The fees required under this chapter must be applied to the expense of administering this chapter.

[2011, c. 366, §50 (AMD) .]

SECTION HISTORY
1981, c. 126, §2 (NEW). 1983, c. 221, §2 (AMD). 1991, c. 780, §H2 (AMD). 2003, c. 620, §4 (AMD). 2011, c. 366, §50 (AMD).

§8118. APPLICATION OF ADMINISTRATIVE PROCEDURE ACT

The Maine Administrative Procedure Act, Title 5, chapter 375, shall govern all administrative actions taken under this chapter. [1981, c. 126, §2 (NEW).]

SECTION HISTORY
1981, c. 126, §2 (NEW).

§8119. SEVERABILITY CLAUSE

If any provision of this chapter or the application thereof to any person or circumstance is held invalid by the court of competent jurisdiction, the holding shall not affect other provisions or applications of this chapter which can be given effect without that jurisdiction or application. [1981, c. 126, §2 (NEW).]

SECTION HISTORY
1981, c. 126, §2 (NEW).

§8120. FIREARMS PROFICIENCY

(REPEALED)

SECTION HISTORY
1987, c. 602, §3 (NEW). 1997, c. 360, §4 (RP).

§8120-A. HANDGUNS

A professional investigator licensed under this chapter may carry a handgun while performing the duties of a professional investigator only after being issued a concealed handgun permit by the chief pursuant to Title 25, chapter 252 and passing the written firearms examination prescribed by the chief. [2013, c. 424, Pt. A, §17 (NEW).]

SECTION HISTORY
1997, c. 360, §5 (NEW). 2011, c. 298, §13 (AMD). 2011, c. 366, §51 (AMD). 2013, c. 424, Pt. A, §17 (RPR).

§8121. CONFIDENTIALITY WHEN UNDER CONTRACT TO LAW ENFORCEMENT AGENCY

A professional investigator or investigative assistant who enters into a written contract with a law enforcement agency in this State to provide investigative services or consultation to the law enforcement agency is subject to the same provisions of law regarding confidentiality as are employees of the law enforcement agency with which the professional investigator or investigative assistant is under contract. [2011, c. 366, §52 (AMD).]

SECTION HISTORY
2003, c. 620, §5 (NEW). 2011, c. 366, §52 (AMD).

§8122. PROOF OF VALID PROFESSIONAL INVESTIGATOR'S LICENSE

A person or company soliciting work or employment as a professional investigator shall provide proof to any client that the professional investigator holds a valid professional investigator's license before entering into any agreement or contract to conduct investigations. [2011, c. 366, §53 (NEW).]

SECTION HISTORY
2011, c. 366, §53 (NEW).

§8123. VIOLATION

Except when a criminal penalty is otherwise provided, a person who violates this chapter or a rule adopted pursuant to this chapter commits a civil violation for which a fine of not less than $1,000 may be adjudged. [2011, c. 366, §54 (NEW).]

SECTION HISTORY
2011, c. 366, §54 (NEW).

Chapter 93: PRIVATE SECURITY GUARDS

§9401. SHORT TITLE

This chapter shall be known and may be cited as the "Private Security Guards Act." [1981, c. 113, §2 (NEW).]

SECTION HISTORY
1981, c. 113, §2 (NEW).

§9402. PURPOSE

It is the purpose of this chapter to regulate any person engaging in the business of providing a private security guard or private security guards. [1981, c. 113, §2 (NEW).]

SECTION HISTORY
1981, c. 113, §2 (NEW).

§9403. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1981, c. 113, §2 (NEW).]

1. **Armored car service.** "Armored car service" means the service provided by any person transporting or offering to transport, under armed security guard, currency, jewels, stocks, bonds, paintings or other things of value in a motor vehicle specially equipped to offer a high degree of security.

[1981, c. 113, §2 (NEW) .]

1-A. **Agent.** "Agent" means a principal corporate officer, partner, owner or majority shareholder of a contract security company or a resident of the State who manages or supervises the security guard business of a resident or nonresident contract security company within the State. This definition does not apply in section 9412, subsection 2, wherein "agent" has the common dictionary definition indicated by its context.

[1987, c. 170, §1 (NEW) .]

2. **Commissioner.** "Commissioner" means the Commissioner of Public Safety.

[1981, c. 113, §2 (NEW) .]

3. **Contract security company.** "Contract security company" means any person engaged in the business of providing, or who undertakes to provide, a security guard for another person.

[1981, c. 113, §2 (NEW) .]

3-A. **Dangerous substance.** "Dangerous substance" means alcohol or any substance that is a schedule W, X, Y or Z drug under Title 17-A, chapter 45.

[1987, c. 170, §2 (NEW) .]

3-B. **Drug abuser.** "Drug abuser" means a person who uses any dangerous substance in violation of any law of the State.

[1987, c. 170, §2 (NEW) .]

3-C. **Drug addict.** "Drug addict" means a drug-dependent person who due to the use of a dangerous substance has developed such a tolerance to the substance that abrupt termination of the use of the substance would produce withdrawal symptoms.

[1987, c. 170, §2 (NEW) .]

3-D. **Drug-dependent person.** "Drug-dependent person" means a person who is unable to function effectively and whose inability to do so results from the use of a dangerous substance.

[1987, c. 170, §2 (NEW) .]

3-E. **Employee.** "Employee" means a natural person who performs one or more security guard functions under a contract of hire between the natural person and a contract security company or between the natural person and a proprietary security organization. A natural person who is an employee of a contract security company may not simultaneously be an employee of a proprietary security organization. This definition does not apply in section 9412, subsection 4, wherein "employee" has its common dictionary definition.

[1987, c. 170, §2 (NEW) .]

3-F. **Firearm.** "Firearm" has the same meaning as set forth in Title 17-A, section 2, subsection 12-A.

[1987, c. 170, §2 (NEW) .]

3-G. **Formal charging instrument.** "Formal charging instrument" means a complaint, indictment, information, juvenile petition or other formal written accusation against a person for some criminal or juvenile offense.

[1987, c. 170, §2 (NEW) .]

3-H. **Fugitive from justice.** "Fugitive from justice" has the same meaning as set forth in Title 15, section 201, subsection 4.

[1987, c. 170, §2 (NEW) .]

3-I. **Government.** "Government" has the same meaning as set forth in Title 17-A, section 2, subsection 13.

[1987, c. 170, §2 (NEW) .]

3-J. **Law enforcement officer.** "Law enforcement officer" has the same meaning as set forth in Title 17-A, section 2, subsection 17.

[1987, c. 170, §2 (NEW) .]

4. **Licensee.** "Licensee" means any person to whom a license is granted in accordance with this chapter.

[1981, c. 113, §2 (NEW) .]

5. **Licensing authority.** "Licensing authority" means the Commissioner of Public Safety.

[1981, c. 113, §2 (NEW) .]

6. **Person.** "Person" means any natural person, firm, association, organization, partnership, corporation or any employee or agent thereof.

[1981, c. 113, §2 (NEW) .]

7. **Principal corporate officer.** "Principal corporate officer" means the president, vice-president, treasurer, secretary, clerk and comptroller, as well as any other person who performs functions for the corporation corresponding to those performed by the other officers enumerated in this subsection.

[1981, c. 113, §2 (NEW) .]

8. **Proprietary security organization.** "Proprietary security organization" means any organization or department of that organization which provides fulltime security guards solely for itself.

[1981, c. 113, §2 (NEW) .]

8-A. **Reckless or negligent conduct.** "Reckless or negligent conduct" means that the applicant, either consciously disregarding or failing to be aware of a risk that his conduct would cause such a result, engaged in conduct which in fact created a substantial risk of either death, serious bodily injury, bodily injury or offensive physical contact to another human being or the taking of, or damage or destruction to, the property of another person or government, and the applicant's disregard or failure to be aware of that risk, when viewed in light of the nature and purpose of the applicant's conduct and the circumstances known to him, involved a deviation from the standard of conduct that a reasonable and prudent person would observe in the same situation.

[1987, c. 170, §3 (NEW) .]

9. **Security guard.** "Security guard" means any person who, for any consideration whatsoever, performs any of the following functions:

A. Protection of individuals or property from harm or theft of property of any kind; [1981, c. 113, §2 (NEW).]

B. Prevention, observation or detection of any unauthorized activity on private property; [1981, c. 113, §2 (NEW).]

C. Prevention of unlawful intrusion or entry, larceny, vandalism, abuse, arson or trespass on private property; [1981, c. 113, §2 (NEW).]

D. [1987, c. 701, §4 (RP).]

E. Street patrol service; or [1981, c. 113, §2 (NEW).]

F. Armored car service. [1981, c. 113, §2 (NEW); 1987, c. 701, §4 (AMD).]

10. **Security system.** "Security system" means equipment designed to detect or signal an unauthorized intrusion to which security guards are expected to respond.

[1987, c. 701, §5 (AMD) .]

11. **Street patrol service.** "Street patrol service" means any contract security company or proprietary security organization utilizing foot patrols, motor vehicles or any other means of transportation on public thoroughfares as security guards.

[1981, c. 113, §2 (NEW) .]

SECTION HISTORY
1981, c. 113, §2 (NEW). 1987, c. 170, §§1-5 (AMD).

§9404. LICENSE REQUIREMENT; EXCEPTIONS

1. No person may act as a security guard without first obtaining from the commissioner a license to be a contract security company.

[1981, c. 113, §2 (NEW) .]

2. This section does not apply to the following:

A. Any proprietary security organization or any employee thereof; [1987, c. 170, §6 (AMD).]

B. Any person employed by a person possessing a valid license to be a contract security company; [1981, c. 113, §2 (NEW).]

C. Any person possessing a valid contract security company license granted under any prior existing provision of law of this State, provided that upon expiration of that license the person shall be governed by this section. [1981, c. 113, §2 (NEW).]

[1981, c. 113, §2 (NEW) .]

SECTION HISTORY
1981, c. 113, §2 (NEW). 1987, c. 170, §6 (AMD).

§9405. LICENSE QUALIFICATIONS

1. **Qualifications.**

[1987, c. 170, §7 (RP) .]

1-A. **Criteria for issuing license.** The commissioner shall issue, upon written application, a license to be a contract security company to any person who has demonstrated good moral character and who meets the following requirements:

A. Is 18 years of age or older; [1987, c. 170, §8 (NEW).]

B. Is a citizen or resident alien of the United States; [1987, c. 170, §8 (NEW).]

C. Has not been dishonorably discharged from military service; [1987, c. 170, §8 (NEW).]

D. Has not been convicted of a crime punishable by one year or more imprisonment or, within the past 5 years, of any crime enumerated in section 9412; [1987, c. 170, §8 (NEW).]

E. Has not been adjudicated to have committed a juvenile offense involving conduct which, if committed by an adult, is punishable by one year or more imprisonment or, within the past 5 years, a juvenile offense involving conduct which, if committed by an adult, is a crime enumerated in section 9412; [1987, c. 170, §8 (NEW).]

F. Submits an application which contains the following, to be answered by the applicant:

(1) Full name;

(2) Full current address and addresses for the prior 5 years;

(3) The date and place of birth, height, weight and color of eyes;

(4) A record of previous issuances of, refusals to issue and renew, suspensions and revocations of a license to be a contract security company. The record of previous refusals to issue alone does not constitute cause for refusal and the record of previous refusals to renew and revocations alone constitutes cause for refusal only as provided in section 9411-A;

(5) The following questions.

(a) Is there a formal charging instrument now pending against you in this or any other jurisdiction for a crime which is punishable by one year or more imprisonment or for any other crime alleged to have been committed by you with the use of a dangerous weapon, as defined in Title 17-A, section 2, subsection 9, or of a firearm against another person?

(b) Is there a formal charging instrument now pending against you in this or any other jurisdiction for a juvenile offense which involves conduct which, if committed by an adult, would be punishable by one year or more of imprisonment or for any other juvenile offense alleged to have been committed by you with the use of a dangerous weapon, as defined in Title 17-A, section 2, subsection 9, or of a firearm against another person?

(c) Have you ever been convicted of a crime described in division (a) or adjudicated as having committed a juvenile offense as described in division (b)?

(d) Is there a formal charging instrument now pending against you in this jurisdiction for any crime enumerated in section 9412?

(e) Is there a formal charging instrument now pending against you in this jurisdiction for a juvenile offense which involves conduct which, if committed by an adult, would be a crime enumerated in section 9412?

(f) Have you within the past 5 years been convicted of a crime described in division (d) or adjudicated as having committed a juvenile offense as described in division (e)?

(g) Are you a fugitive from justice?

(h) Are you a drug abuser, drug addict or drug-dependent person?

(i) Do you have a mental disorder which causes you to be potentially dangerous to yourself or others?

(j) Have you been adjudicated to be an incapacitated person pursuant to Title 18-A, article V, Parts 3 and 4, and not had that designation removed by an order under Title 18-A, section 5-307, subsection (b)?

(k) Have you been dishonorably discharged from the military forces within the past 5 years?

(l) Are you an illegal alien;

(6) A list of employees as of the date the applicant signs the application who will perform security guard functions within the State. This list shall identify each employee by his full name, full current address and addresses for the prior 5 years and his date and place of birth, height, weight and color of eyes. For each employee on this list who will perform security guard functions at the site of a labor dispute or strike, the applicant shall have previously investigated the background of the employee to ensure that the employee meets all of the requirements to be a security guard as contained in section 9410-A, subsection 1. If the employee meets all of the requirements to be a security guard, the applicant shall also submit a statement, signed by the applicant, stating that the applicant has conducted this background investigation and that the employee meets the requirements contained in section 9410-A, subsection 1; and

(7) A photograph of the applicant taken within 6 months of the date the applicant affixes his signature to the application; and [1987, c. 170, §8 (NEW).]

G. Does the following:

(1) At the request of the commissioner or his designee, takes whatever action is required of him by law to allow the commissioner or his designee to obtain from: Hospitals and mental institutions either within or outside of the State, limited to records of involuntary commitments; the courts; law enforcement agencies; and the military, information relevant to the following:

(a) The ascertainment of whether the information supplied on the application or any documents made a part of the application is true and correct;

(b) The ascertainment of whether each of the additional requirements of this section has been met; and

(c) Section 9411-A;

(2) If it becomes necessary to resolve any questions as to his identity, submits to having his fingerprints taken by the commissioner or his designee; and

(3) Submits the application fee in accordance with section 9407, subsection 1. [1987, c. 170, §8 (NEW).]

[1987, c. 170, §8 (NEW) .]

2. **Good moral character.**

[1987, c. 170, §9 (RP) .]

2-A. **Complete application; certification by applicant.** The requirements set out in subsection 1-A constitute a complete application. By affixing his signature to the application, the applicant certifies the following:

A. That the statements he makes in the application and any documents he makes a part of the application are true and correct; [1987, c. 170, §10 (NEW).]

B. That he understands an affirmative answer to any of the questions in subsection 1-A, paragraph F, subparagraph (5), except the questions in divisions (a), (b), (d) and (e), is cause for refusal; and [1987, c. 170, §10 (NEW).]

C. That he understands any false statements made in the application or any document made a part of the application may result in prosecution as provided in section 9412, subsection 1, paragraph D. [1987, c. 170, §10 (NEW).]

[1987, c. 170, §10 (NEW) .]

2-B. **Copy of laws furnished to applicant.** A copy of this chapter and the definitions from other chapters which are used in this chapter shall be provided to every applicant.

[1987, c. 170, §10 (NEW) .]

2-C. **Good moral character.** The commissioner, in judging good moral character, shall make his determination in writing based solely upon information recorded by governmental entities within 5 years of receipt of the application, including, but not limited to, the following matters:

A. Information of record relative to incidents of abuse by the applicant of family or household members, provided pursuant to Title 19-A, section 4012, subsection 1; [1995, c. 694, Pt. D, §57 (AMD); 1995, c. 694, Pt. E, §2 (AFF).]

B. Information of record relative to 3 or more convictions of the applicant for crimes punishable by less than one year imprisonment or 3 or more adjudications of the applicant for juvenile offenses involving conduct which, if committed by an adult, is punishable by less than one year imprisonment; [1987, c. 170, §10 (NEW).]

C. Information of record relative to 3 or more adjudications of the applicant for civil violations; [1987, c. 170, §10 (NEW).]

D. Information of record relative to license suspensions under section 9411-A; or [1987, c. 170, §10 (NEW).]

E. Information of record indicating that the applicant has engaged in reckless or negligent conduct. [1987, c. 170, §10 (NEW).]

[1995, c. 694, Pt. D, §57 (AMD); 1995, c. 694, Pt. E, §2 (AFF) .]

3. **Who must meet qualifications.** The qualifications enumerated in this section must be met:

A. If the applicant is a partnership, by each partner; [1981, c. 113, §2 (NEW).]

B. If the applicant is a corporation, by an agent of that corporation; or [1981, c. 113, §2 (NEW).]

C. If the applicant is other than a partnership or corporation, by the natural person making the application. [1981, c. 113, §2 (NEW).]

[1981, c. 113, §2 (NEW) .]

4. **Access to confidential records.** Notwithstanding that certain records retained by governmental entities are by law made confidential, yet are necessary to the commissioner's determination of the applicant's good moral character and compliance with the additional requirements of this section and of section 9411-A, the following records shall be made available, at the request of the commissioner or his designee, for inspection by and dissemination to the commissioner or his designee:

A. The records pertaining to involuntary commitments to Riverview Psychiatric Center and Dorothea Dix Psychiatric Center; [1987, c. 170, §11 (NEW); 2005, c. 236, §§3, 4 (REV).]

B. The records compiled pursuant to Title 19-A, section 4012, subsection 1; [1995, c. 694, Pt. D, §58 (AMD); 1995, c. 694, Pt. E, §2 (AFF).]

C. Juvenile and adult crime records; and [1987, c. 170, §11 (NEW).]

D. Military records. [1987, c. 170, §11 (NEW).]

[1995, c. 694, Pt. D, §58 (AMD); 1995, c. 694, Pt. E, §2 (AFF); 2005, c. 236, §§3, 4 (REV) .]

SECTION HISTORY
1981, c. 113, §2 (NEW). 1987, c. 170, §§7-11 (AMD). 1995, c. 694, §§D57,58 (AMD). 1995, c. 694, §E2 (AFF). 2005, c. 236, §§3,4 (REV).

§9406. ACQUISITION OF LICENSE BY PERSONS CURRENTLY LICENSED

A person possessing, under the laws of this State, a valid license to be a contract security company on the effective date of this chapter shall, upon expiration of his license, application and payment of the required fee, be issued a contract security company license. [1981, c. 113, §2 (NEW).]

SECTION HISTORY
1981, c. 113, §2 (NEW).

§9407. APPLICATION FOR ORIGINAL LICENSE

1. **Application; fee.** Applications for original licenses shall be made to the commissioner on forms prescribed by him with respect to the requirements of section 9405. The fee for a license application is $400, of which $100 must be submitted with the application and $300 must be submitted upon issuance of the

license. If the previously issued license has expired and has not been renewed within a period of 60 days, the application shall be considered the original application and the same fees and all requirements of an original application shall apply.

[1983, c. 221, §3 (AMD) .]

2. **Who must subscribe and swear to the application.** Each application shall be subscribed and sworn to:

A. If the applicant is a partnership, by each partner; [1981, c. 113, §2 (NEW).]

B. If the applicant is a corporation, by at least one principal corporate officer and, if different, by the agent of the corporation meeting the qualifications of section 9405, subsection 1-A; or [1989, c. 502, Pt. A, §114 (AMD).]

C. If the applicant is other than a partnership or corporation, by the natural person making the application. [1981, c. 113, §2 (NEW).]

[1989, c. 502, Pt. A, §114 (AMD) .]

SECTION HISTORY
1981, c. 113, §2 (NEW). 1983, c. 221, §3 (AMD). 1989, c. 502, §A114 (AMD).

§9408. RENEWAL OF LICENSE

Each contract security company license shall be issued for a term of one year and is, unless revoked or suspended, renewable annually. The fee for a license renewal is $200, which is refundable upon denial of renewal. [1983, c. 221, §4 (AMD).]

SECTION HISTORY
1981, c. 113, §2 (NEW). 1983, c. 221, §4 (AMD).

§9409. BONDING REQUIREMENT

1. **Requirement.** The requirements for bonding are as follows.

A. A person licensed under this chapter shall give to the commissioner a bond in the sum of $10,000 if he is a resident, and in the sum of $50,000 if he is not a resident, of the State. [1981, c. 113, §2 (NEW).]

B. For the purposes of this section, corporation is a resident if it is incorporated under the laws of this State. Any other person is a resident if the natural person who qualifies for the license resides in this State. [1981, c. 113, §2 (NEW).]

[1981, c. 113, §2 (NEW) .]

2. **Form of bond.** Each bond shall be:

A. In a form prescribed by the commissioner; [1981, c. 113, §2 (NEW).]

B. Executed by the licensee as principal and by a surety company authorized to do business as such in this State as surety; and [1981, c. 113, §2 (NEW).]

C. Conditioned upon the honest conduct of the licensee and the right of any person, including the officer of any aggrieved labor union or association, whether or not incorporated, injured by the intentional, knowing, reckless or negligent act of the licensee to bring, in his own name, an action on the bond. [1981, c. 113, §2 (NEW).]

[1981, c. 113, §2 (NEW) .]

SECTION HISTORY
1981, c. 113, §2 (NEW).

§9410. LICENSE TRANSFERABILITY

1. **Transfer.** No license issued pursuant to this chapter may be assigned or transferred either by operation of law or otherwise.

[1981, c. 113, §2 (NEW) .]

2. **Death of licensee.** If the license is held by an owner other than a corporation and the owner dies, becomes disabled or otherwise ceases to engage in the business, the successor, heir, devisee or personal representative of the owner may, within 60 days of the death, disablement or other termination of operation by the original licensee, apply for a license on a form prescribed by the commissioner. The transferee shall be subject to this chapter.

[1981, c. 113, §2 (NEW) .]

3. **Filing.** For good cause, the commissioner may extend the period of filing the application required by subsection 2.

[1981, c. 113, §2 (NEW) .]

SECTION HISTORY
1981, c. 113, §2 (NEW).

§9410-A. SECURITY GUARD QUALIFICATIONS

1. **Qualifications to be a security guard.** No natural person may be employed as a security guard by a contract security company unless the natural person meets the following minimum requirements:

A. Is 18 years of age or older; [1987, c. 170, §12 (NEW).]

B. Is a citizen or resident alien of the United States; [1987, c. 170, §12 (NEW).]

C. Has not been dishonorably discharged from military service within the last 5 years; [1987, c. 170, §12 (NEW).]

D. Has not been convicted of a crime punishable by one year or more of imprisonment or, within the past 5 years, any crime enumerated in section 9412; [1987, c. 170, §12 (NEW).]

E. Has not been adjudicated to have committed a juvenile offense involving conduct which, if committed by an adult, is punishable by one year or more of imprisonment or, within the past 5 years, a juvenile offense involving conduct which, if committed by an adult, is a crime enumerated in section 9412; [1987, c. 170, §12 (NEW).]

F. Does not have 3 or more convictions for crimes punishable by less than one year of imprisonment within the past 5 years; [2003, c. 12, §1 (AMD).]

G. Is not a fugitive from justice; [1987, c. 170, §12 (NEW).]

H. Is not a drug abuser, drug addict or drug-dependent person; [1987, c. 170, §12 (NEW).]

I. Is not potentially dangerous to himself or others as the result of a mental disorder; [1987, c. 170, §12 (NEW).]

J. Has not been adjudicated to be an incapacitated person pursuant to Title 18-A, article V, Parts 3 and 4, or if so adjudicated, has had that designation removed by an order under Title 18-A, section 5-307, subsection (b); and [1987, c. 170, §12 (NEW).]

K. At the request of the contract security company, the commissioner or his designee, takes whatever action is required of him by law to allow the contract security company, the commissioner or his designee to obtain from: Hospitals and mental institutions either within or outside the State, limited to records of involuntary commitments; the courts; law enforcement agencies; and the military, information relevant to whether the natural person meets the requirements set forth in paragraphs A to J. [1987, c. 170, §12 (NEW).]

[2003, c. 12, §1 (AMD) .]

2. **Reporting new security guards to commissioner.** A licensee shall notify the commissioner of all employees who will perform security guard functions in the State and who were not listed in the application for a contract security company license before the date that the employee begins to perform security guard functions in the State. The notice shall be made on forms prescribed by the commissioner. The forms shall contain, but not be limited to, the following information:

A. The employee's full name; [1987, c. 170, §12 (NEW).]

B. The employee's full current address and addresses for the prior 5 years; and [1987, c. 170, §12 (NEW).]

C. The employee's date and place of birth, height, weight and color of eyes. [1987, c. 170, §12 (NEW).]

[1987, c. 170, §12 (NEW) .]

3. **Background investigation of security guards at site of labor dispute or strike.** For each employee reported to the commissioner under subsection 2 who will perform security guard functions at the site of a labor dispute or strike, the licensee shall have previously investigated the background of the employee to ensure that the employee meets all of the requirements to be a security guard, as contained in subsection 1. The licensee shall also sign a statement accompanying the notice required by subsection 2, in which the licensee shall state that he has conducted this investigation and that the employee meets the requirements contained in subsection 1.

[1987, c. 170, §12 (NEW) .]

4. **Background investigation by licensee of all other security guards.** For all other employees reported to the commissioner under subsection 2, and for each employee on the list required by section 9405, subsection 1-A, paragraph F, subparagraph (6), for whom the licensee has not previously submitted a statement that the employee meets the requirements of subsection 1, the licensee shall investigate the background of the employee to ensure that the employee meets all of the requirements to be a security guard, as contained in subsection 1. Within 60 days of the date that the employee begins to perform security guard functions within the State, the licensee shall complete this background investigation and submit to the commissioner a statement, signed by the licensee, that the licensee has conducted the background investigation and that the employee meets the requirements of subsection 1. This statement must be submitted to the commissioner before an employee may wear, carry or use a firearm in the performance of security guard functions and before an employee may perform security guard functions at the site of a labor dispute or strike.

[1987, c. 170, §12 (NEW) .]

5. **Access to confidential records.** Notwithstanding that certain records retained by governmental entities are by law made confidential, yet are necessary to the commissioner's determination of the applicant's good moral character and compliance with the additional requirements of this section and of section 9411-A, the following records shall be made available, at the request of the commissioner or his designee, for inspection by and dissemination to the commissioner or his designee:

A. The records pertaining to involuntary commitments to Riverview Psychiatric Center and Dorothea Dix Psychiatric Center; [1987, c. 170, §12 (NEW); 2005, c. 236, §§3, 4 (REV).]

B. The records compiled pursuant to Title 19-A, section 4012, subsection 1; [1995, c. 694, Pt. D, §59 (AMD); 1995, c. 694, Pt. E, §2 (AFF).]

C. Juvenile and adult crime records; and [1987, c. 170, §12 (NEW).]

D. Military records. [1987, c. 170, §12 (NEW).]

[1995, c. 694, Pt. D, §59 (AMD); 1995, c. 694, Pt. E, §2 (AFF); 2005, c. 236, §§3, 4 (REV) .]

SECTION HISTORY
1987, c. 170, §12 (NEW). 1995, c. 694, §D59 (AMD). 1995, c. 694, §E2 (AFF). 2003, c. 12, §1 (AMD). 2005, c. 236, §§3,4 (REV).

§9411. REFUSAL; SUSPENSION; REVOCATION; GROUNDS

(REPEALED)

SECTION HISTORY
1981, c. 113, §2 (NEW). 1987, c. 170, §13 (RP).

§9411-A. REFUSAL TO RENEW; SUSPENSION; REVOCATION; REAPPLICATION

1. **Refusal to renew; suspension; revocation.** The commissioner may refuse to renew a license, after a hearing in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV. The District Court may suspend or revoke the license of any person licensed under this chapter. The commissioner may refuse to renew a license and the District Court may suspend or revoke a license on any one or more of the following grounds.

A. The application, any documents made a part of the application, any notice or any statement filed with the commissioner contained a material misstatement. [1987, c. 170, §14 (NEW).]

B. The licensee becomes ineligible to hold a license under this chapter. Ineligibility is determined on the basis of the criteria contained in section 9405. [1987, c. 170, §14 (NEW).]

C. The licensee fails to comply with the requirements of section 9405, subsection 1-A, paragraph F, subparagraph (6). [1987, c. 170, §14 (NEW).]

D. The licensee has knowingly employed as a security guard, or has knowingly kept as an employee, any natural person who does not meet the requirements of section 9410-A, subsection 1. [1987, c. 170, §14 (NEW).]

E. The licensee fails to comply with the requirements of section 9410-A, subsection 2, 3 or 4. [1987, c. 170, §14 (NEW).]

F. The licensee fails to comply with any of the rules promulgated by the commissioner under this chapter. [1987, c. 170, §14 (NEW).]

G. The licensee has knowingly encouraged or allowed any employee to violate section 9412, subsection 4, 5 or 6. [1987, c. 170, §14 (NEW).]

[1987, c. 170, §14 (NEW); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

2. **Reapplication.** No person, otherwise eligible, whose license the commissioner has refused to renew or who has had a license revoked, is eligible for reapplication until the expiration of 5 years from the date of refusal to renew or revocation.

[1987, c. 170, §14 (NEW) .]

SECTION HISTORY
1987, c. 170, §14 (NEW). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF).

§9412. UNLAWFUL ACTS

1. **Acting without license; false representations.** It is a Class D crime for any person knowingly to commit any of the following acts:

A. Subject to section 9404, to act as a security guard without a valid license; [1981, c. 113, §2 (NEW).]

B. To publish any advertisement, letterhead, circular, statement or phrase of any kind which suggests that a licensee is an official police agency or any other agency, instrumentality or division of this State, any political subdivision thereof, or of the Federal Government; [1981, c. 113, §2 (NEW).]

C. To falsely represent that a person is or was in his employ as a licensee; [1987, c. 170, §15 (AMD).]

D. To make any false statement or material omission in any application, any documents made a part of the application, any notice or any statement filed with the commissioner; or [1987, c. 170, §15 (AMD).]

E. To make any false statement or material omission relative to the requirements of section 9410-A, subsection 1, in applying for a position as a security guard with a contract security company. [1987, c. 170, §16 (NEW).]

[1987, c. 170, §§15, 16 (AMD) .]

2. **Failure to return equipment; representation as peace officer.** It is a Class D crime for any security guard knowingly to commit any of the following acts:

A. To fail to return immediately on demand, or within 7 days of termination of employment, any uniform, badge, or other item of equipment issued to him by an employer; [1981, c. 113, §2 (NEW).]

B. To make any representation which suggests, or which would reasonably cause another person to believe, that he is a sworn peace officer of this State, any political subdivision thereof, or of any other state or of the Federal Government; [1981, c. 113, §2 (NEW).]

C. To wear or display any badge, insignia, device, shield, patch or pattern which indicates or suggests that he is a sworn peace officer, or which contains or includes the word "police" or the equivalent thereof, or is similar in wording to any law enforcement agency; or [1981, c. 113, §2 (NEW).]

D. To possess or utilize any vehicle or equipment displaying the words "police," "law enforcement officer," or the equivalent thereof, or have any sign, shield, marking, accessory or insignia that may indicate that the vehicle is a vehicle of a public law enforcement agency. [1981, c. 113, §2 (NEW).]

Paragraph A does not apply to any proprietary security organization or any employee thereof.

[1987, c. 170, §17 (AMD) .]

3. **Representations as to employees; failure to surrender license; posting of license.** It is a Class D crime for any person licensed under this chapter knowingly to commit any of the following acts:

A. To falsely represent that a person was or is in his employ as a security guard; [1981, c. 113, §2 (NEW).]

B. To fail or refuse to surrender his license to the commissioner within 72 hours following revocation or suspension of the license; or after the licensee ceases to do business subject to section 9410; [1981, c. 113, §2 (NEW).]

C. To post the license or permit the license to be posted upon premises other than those described in the license; or [1981, c. 113, §2 (NEW).]

D. To fail to cause the license to be posted and displayed at all times, within 72 hours of receipt of the license, in a conspicuous place in the principal office of the licensee within the State. [1981, c. 113, §2 (NEW).]

[1981, c. 113, §2 (NEW) .]

4. **Other unlawful acts.** It is a Class D crime for any person licensed under this chapter, or for any employee thereof, knowingly to commit any of the following acts:

A. To incite, encourage or aid any person who has become a party to any strike to commit any unlawful act against any person or property; [1981, c. 113, §2 (NEW).]

B. To incite, stir up, create or aid in the inciting of discontent or dissatisfaction among the employees of any person with the intention of having them strike; [1981, c. 113, §2 (NEW).]

C. To interfere with or prevent lawful and peaceful picketing during strikes; [1981, c. 113, §2 (NEW).]

D. To interfere with, restrain or coerce employees in the exercise of their right to form, join or assist any labor organization of their own choosing; [1981, c. 113, §2 (NEW).]

E. To interfere with or hinder lawful or peaceful collective bargaining between employers and employees; [1981, c. 113, §2 (NEW).]

F. To pay, offer to give any money, gratuity, consideration or other thing of value, directly or indirectly, to any person for any verbal or written report of the lawful activities of employees in the exercise of their right to organize, form or assist any labor organization and to bargain collectively through representatives of their own choosing; [1981, c. 113, §2 (NEW).]

G. To advertise for, recruit, furnish or replace or offer to furnish or replace for hire or reward, within or outside the State, any skilled or unskilled help or labor, armed guards, other than armed guards employed for the protection of payrolls, property or premises, for service upon property which is being operated in anticipation of or during the course or existence of a strike; [1981, c. 113, §2 (NEW).]

H. To furnish armed guards upon the highways for persons involved in labor disputes; [1981, c. 113, §2 (NEW).]

I. To furnish or offer to furnish to employers or their agents any arms, munitions, tear gas implements or any other weapons; [1981, c. 113, §2 (NEW).]

J. To send letters or literature to employers offering to eliminate labor unions; or [1981, c. 113, §2 (NEW).]

K. To advise any person of the membership of an individual in a labor organization for the purpose of preventing the individual from obtaining or retaining employment. [1981, c. 113, §2 (NEW).]

[1981, c. 113, §2 (NEW) .]

5. **Dangerous weapons at labor disputes and strikes.** It is a Class D crime for any person, including, but not limited to, security guards and persons involved in a labor dispute or strike, to be armed with a dangerous weapon, as defined in Title 17-A, section 2, subsection 9, at the site of a labor dispute or strike. A person holding a valid permit to carry a concealed handgun is not exempt from this subsection. A security guard is exempt from this subsection to the extent that federal laws, rules or regulations require the security guard to be armed with a dangerous weapon at the site of a labor dispute or strike.

[2013, c. 424, Pt. A, §18 (AMD) .]

6. **Class E crimes.** It is a Class E crime for any person licensed under this chapter or for any employee of such a person, to knowingly commit any of the following acts:

A. To perform or attempt to perform security guard functions at the site of a labor dispute or strike while not physically located on property leased, owned, possessed or rented by the person for whom the licensee is providing security guards. [1987, c. 170, §18 (NEW).]

[1987, c. 170, §18 (NEW) .]

SECTION HISTORY
1981, c. 113, §2 (NEW). 1987, c. 170, §§15-18 (AMD). 2013, c. 424, Pt. A, §18 (AMD).

§9413. CHANGE IN THE STATUS OF LICENSE

The licensee shall notify the commissioner within 30 days of any change in his qualifying agent, officers or directors or material change in the information previously furnished or required to be furnished to the commissioner or any occurrence which could reasonably be expected to affect the licensee's right to a license under this chapter. [1981, c. 113, §2 (NEW).]

SECTION HISTORY
1981, c. 113, §2 (NEW).

§9414. POWERS OF THE COMMISSIONER

1. **Subpoenas.** In any investigation conducted by the commissioner under this chapter, the commissioner may issue subpoenas to compel the attendance of witnesses and the production of evidence relevant to any fact in issue.

[1981, c. 113, §2 (NEW) .]

2. **Contempt.** If a witness refuses to obey a subpoena or to give any evidence relevant to proper inquiry by the commissioner, the Attorney General may petition the Superior Court in the county where the refusal occurred to find the witness in contempt. The Attorney General shall cause to be served on the witness an order requiring him to appear before the Superior Court to show cause why he should not be adjudged in

contempt. The court shall, in a summary manner, hear the evidence and, if it is such as to warrant him to do so, punish the witness in the same manner and to the same extent as for contempt committed before the Superior Court or with reference to the process of the Superior Court.

[1981, c. 113, §2 (NEW) .]

3. **Rules.** The commissioner shall adopt all rules necessary to administer this chapter.

[1981, c. 113, §2 (NEW) .]

4. **Expenses.** The fees required under this chapter shall be applied to the expense of administering this chapter.

[1981, c. 113, §2 (NEW) .]

SECTION HISTORY
1981, c. 113, §2 (NEW).

§9415. APPLICATION OF MAINE ADMINISTRATIVE PROCEDURE ACT

The Maine Administrative Procedure Act, Title 5, chapter 375, subchapter I, shall govern all administrative actions taken under this chapter. [1981, c. 113, §2 (NEW).]

SECTION HISTORY
1981, c. 113, §2 (NEW).

§9416. FIREARMS

A person who acts as a security guard may, while he is in the performance of his duties in that capacity, carry a loaded weapon in a motor vehicle which is being used to provide armored car service or which is otherwise transporting things of value, provided that any weapon carried is not concealed. [1981, c. 113, §2 (NEW).]

SECTION HISTORY
1981, c. 113, §2 (NEW).

§9417. APPLICATION

This chapter does not apply to the following: [1981, c. 113, §2 (NEW).]

1. **Law enforcement officers.** Any person currently employed either full time or part time, who has the permission of that person's appointing authority, provided that this chapter applies to any law enforcement officer who is employed as a security guard by a contract security company licensed under this chapter;

[1989, c. 773, §1 (AMD) .]

2. **Public officials.** Any person employed by the United States, the State, or any political subdivision thereof, or any public instrumentality, while in the performance of that person's official duties; and

[1989, c. 773, §1 (AMD) .]

3. **Locksmiths.** Any person while employed or doing business as a locksmith provided that this chapter applies to any locksmith who is employed as a security guard by or doing business as a contract security company licensed under this chapter. For the purposes of this chapter, a "locksmith" is a person engaged in the sale and service of locks.

[1989, c. 773, §2 (NEW) .]

SECTION HISTORY
1981, c. 113, §2 (NEW). 1989, c. 773, §§1,2 (AMD).

§9418. CONFIDENTIALITY OF APPLICATION AND INFORMATION COLLECTED BY THE COMMISSIONER

Notwithstanding Title 1, chapter 13, subchapter 1, all applications for a license to be a contract security company and any documents made a part of the application, refusals and any information of record collected by the commissioner during the process of ascertaining whether an applicant is of good moral character and meets the additional requirements of sections 9405 and 9411-A, and all information of record collected by the commissioner during the process of ascertaining whether a natural person meets the requirements of section 9410-A, are confidential and may not be made available for public inspection or copying. The applicant or natural person may waive this confidentiality by written notice to the commissioner. All proceedings relating to the issuance of a license to be a contract security company are not public proceedings under Title 1, chapter 13, unless otherwise requested by the applicant. [2011, c. 662, §20 (AMD).]

The commissioner or his designee shall make a permanent record of each license to be a contract security company in a suitable book or file kept for that purpose. The record shall include a copy of the license and shall be available for public inspection. Upon a specific request, the commissioner or his designee shall provide a list of names and current addresses of security guards employed by licensed contract security companies. [1987, c. 170, §19 (NEW).]

SECTION HISTORY
1987, c. 170, §19 (NEW). 2011, c. 662, §20 (AMD).

Chapter 95: COMMERCIAL DRIVING INSTRUCTION

Subchapter 1: GENERAL PROVISIONS HEADING: PL 1995, C. 505, §17 (RP)

§9501. SHORT TITLE

(REPEALED)

SECTION HISTORY
1981, c. 456, §A113 (NEW). 1995, c. 505, §22 (AFF). 1995, c. 505, §17 (RP).

§9502. DEFINITIONS

(REPEALED)

SECTION HISTORY
1981, c. 456, §A113 (NEW). 1985, c. 797, §68 (AMD). 1987, c. 769, §A123 (AMD). 1989, c. 179, §§7,8 (AMD). 1989, c. 700, §§A152,153 (AMD). RR 1991, c. 2, §§119,120 (COR). 1995, c. 402, §A47 (AMD). 1995, c. 505, §22 (AFF). 1995, c. 505, §17 (RP).

Subchapter 2: BOARD OF COMMERCIAL DRIVER EDUCATION HEADING: PL 1995, C. 505, §17 (RP)

§9552. MEMBERSHIP

(REPEALED)

SECTION HISTORY
1981, c. 456, §A113 (NEW). 1983, c. 413, §232 (RPR). 1983, c. 812, §254 (AMD). 1989, c. 503, §B151 (AMD). 1991, c. 837, §A77 (AMD). 1993, c. 600, §A259 (AMD). 1995, c. 402, §A47 (AMD). 1995, c. 505, §22 (AFF). 1995, c. 505, §17 (RP).

§9553. DUTIES

(REPEALED)

SECTION HISTORY
1981, c. 456, §A113 (NEW). 1983, c. 413, §233 (RP).

§9553-A. DUTIES

(REPEALED)

SECTION HISTORY
1983, c. 413, §234 (NEW). 1995, c. 397, §86 (AMD). 1995, c. 505, §22 (AFF). 1995, c. 505, §17 (RP).

§9554. COMPENSATION AND EXPENSES OF BOARD MEMBERS

(REPEALED)

SECTION HISTORY

1981, c. 456, §A113 (NEW). 1983, c. 812, §255 (RPR). 1995, c. 397, §87 (RP).

§9555. SUSPENSION OR REVOCATION OF LICENSE

(REPEALED)

SECTION HISTORY
1983, c. 413, §235 (NEW). 1995, c. 505, §22 (AFF). 1995, c. 505, §17 (RP).

Subchapter 3: LICENSURE HEADING: PL 1995, C. 505, §17 (RP)

§9601. LICENSE REQUIRED

(REPEALED)

SECTION HISTORY
1981, c. 456, §A113 (NEW). 1989, c. 513, §7 (AMD). 1989, c. 700, §A154 (AMD). RR 1991, c. 2, §121 (COR). 1995, c. 65, §§A133,134 (AMD). 1995, c. 65, §§A153,C15 (AFF). 1995, c. 505, §22 (AFF). 1995, c. 505, §17 (RP).

§9602. COMMERCIAL DRIVER EDUCATION SCHOOL LICENSE REQUIREMENTS

(REPEALED)

SECTION HISTORY
1981, c. 456, §A113 (NEW). 1983, c. 413, §236 (AMD). 1985, c. 687, (AMD). 1987, c. 216, §2 (AMD). 1989, c. 179, §9 (AMD). 1989, c. 700, §A155 (AMD). 1989, c. 721, §3 (AMD). RR 1991, c. 2, §122 (COR). 1995, c. 65, §A135 (AMD). 1995, c. 65, §§A153,C15 (AFF). 1995, c. 505, §22 (AFF). 1995, c. 505, §17 (RP).

§9603. INSTRUCTOR LICENSE REQUIREMENTS

(REPEALED)

SECTION HISTORY
1981, c. 456, §A113 (NEW). 1983, c. 413, §237 (AMD). 1995, c. 505, §22 (AFF). 1995, c. 505, §17 (RP).

§9604. DISPLAY OF LICENSE

(REPEALED)

SECTION HISTORY
1981, c. 456, §A113 (NEW). 1995, c. 505, §22 (AFF). 1995, c. 505, §17 (RP).

§9605. LICENSING FEES

(REPEALED)

SECTION HISTORY

1981, c. 456, §A113 (NEW). 1983, c. 204, §14 (AMD). 1983, c. 413, §238 (AMD). 1991, c. 509, §29 (AMD). 1995, c. 502, §H39 (AMD). 1995, c. 505, §22 (AFF). 1995, c. 505, §17 (RP).

§9606. DISPOSITION OF FEES

(REPEALED)

SECTION HISTORY
1981, c. 456, §A113 (NEW). 1995, c. 397, §88 (RP).

§9607. EXAMINATION AND INVESTIGATION ACTIVITIES AND EXPENSES

(REPEALED)

SECTION HISTORY
1981, c. 456, §A113 (NEW). 1983, c. 204, §15 (AMD). 1983, c. 204, §16 (AMD). 1983, c. 468, §§25,26 (AMD). 1983, c. 816, §B8 (AMD). 1991, c. 837, §A78 (AMD). 1995, c. 505, §22 (AFF). 1995, c. 505, §17 (RP).

§9608. PENALTIES; INJUNCTION

(REPEALED)

SECTION HISTORY
1981, c. 456, §A113 (NEW). 1983, c. 413, §239 (AMD). 1983, c. 816, §A38 (AMD). 1995, c. 505, §22 (AFF). 1995, c. 505, §17 (RP).

§9609. INSURANCE FOR GRADUATES

(REPEALED)

SECTION HISTORY
1981, c. 456, §A113 (NEW). 1995, c. 505, §22 (AFF). 1995, c. 505, §17 (RP).

Chapter 97: RESPIRATORY CARE PRACTITIONERS

§9701. 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 respiratory care practitioners; and to assure the availability of respiratory care 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 respiratory care services. [1985, c. 288, §3 (NEW).]

SECTION HISTORY
1985, c. 288, §3 (NEW).

§9702. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1985, c. 288, §3 (NEW).]

1. **Board.** "Board" means the Board of Respiratory Care Practitioners established under this chapter.

[1985, c. 288, §3 (NEW) .]

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

[1989, c. 450, §35 (AMD) .]

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

[1989, c. 450, §35 (AMD) .]

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

[1985, c. 288, §3 (NEW) .]

5. **Respiratory care.** "Respiratory care" means the therapy, management, rehabilitation, diagnostic evaluation and care, administered on the order of a physician or surgeon, of patients with deficiencies and abnormalties affecting the cardiopulmonary system and associated aspects of other bodily systems, including, but not limited to, the following:

A. Direct and indirect pulmonary care services that are of comfort, safe, aseptic, preventative and restorative care to the patient; [1985, c. 288, §3 (NEW).]

B. Direct and indirect respiratory care services including, but not limited to, the administration of pharmacological, diagnostic and therapeutic agents related to respiratory care procedures necessary to implement a treatment, disease prevention, pulmonary rehabilitative or diagnostic regimen prescribed by a physician; [1985, c. 288, §3 (NEW).]

C. Observation and monitoring of signs and symptoms, general behavior, general physical response to respiratory care treatment and diagnostic testing, including determination of whether those signs, symptoms, reactions, behavior or general response exhibit abnormal characteristics; [1985, c. 288, §3 (NEW).]

D. Implementation based on observed abnormalities, appropriate reporting, referral, respiratory care protocols or changes in treatment, pursuant to a prescription by a person authorized to prescribe respiratory care or the initiation of emergency procedures; and [1985, c. 288, §3 (NEW).]

E. Diagnostic and therapeutic use of the following:

(1) Administration of medical gases, aerosols and humidification;

(2) Environmental control mechanisms and hyperbaric therapy;

(3) Pharmacological agents related to respiratory care procedures;

(4) Mechanical or physiological ventilatory support;

(5) Bronchopulmonary hygiene;

(6) Cardiopulmonary resuscitation;

(7) Maintenance of natural airways;

(8) Insertion and maintenance of artificial airways;

(9) Specific diagnostic and testing techniques employed in the medical management of patients to assist in diagnosis, monitoring, treatment and research of pulmonary abnormalities, including measurement of ventilatory volumes, pressures and flows, collection of specimens of blood and collection of specimens from the respiratory tract;

(10) Analysis of blood gases and respiratory secretions and pulmonary function testing; and

(11) Hemodynamic and physiologic measurement and monitoring of cardiac functions as it relates to cardiopulmonary pathophysiology. [1989, c. 450, §36 (AMD).]

F. Initial and follow-up instruction and patient evaluation in a nonhospital setting for the diagnostic and therapeutic uses described in paragraph E. [1985, c. 288, §3 (NEW).]

"Respiratory care" includes the terms "respiratory therapy" or "inhalation therapy."

[1989, c. 450, §36 (AMD) .]

6. **Respiratory care practitioner.** "Respiratory care practitioner" means a person licensed as a respiratory therapist or as a respiratory care technician under this chapter.

[1985, c. 288, §3 (NEW) .]

7. **Respiratory care practitioner trainee.** "Respiratory care practitioner trainee" means an employee of a health care facility who is enrolled in the clinical portion of an approved respiratory care educational program.

[1989, c. 450, §37 (NEW) .]

SECTION HISTORY
1985, c. 288, §3 (NEW). 1989, c. 450, §§35-37 (AMD).

§9703. BOARD OF RESPIRATORY CARE PRACTITIONERS; ESTABLISHMENT; COMPENSATION

1. **Establishment and membership.** There is established within the department, in accordance with Title 5, section 12004-A, subsection 35, a Board of Respiratory Care Practitioners. The board consists of 5 members appointed by the Governor as follows:

A. Three respiratory care practitioners who have been engaged in the practice of respiratory care for at least 2 years immediately preceding their appointments and who are holders of valid licenses for the practice of respiratory care in the State; and [2007, c. 402, Pt. W, §1 (AMD).]

B. Two public members as defined in Title 5, section 12004-A. [2007, c. 402, Pt. W, §1 (AMD).]

[2007, c. 402, Pt. W, §1 (AMD) .]

2. **Terms of appointment.** Appointments are for 3-year terms. Appointments of members must comply with Title 10, section 8009. A member of the board may be removed from office for cause by the Governor.

[2007, c. 402, Pt. W, §1 (AMD) .]

3. **Meetings; chair.** 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.

[2013, c. 246, Pt. B, §18 (AMD) .]

4. **Compensation.**

[1995, c. 397, §89 (RP) .]

SECTION HISTORY
1985, c. 288, §3 (NEW). 1989, c. 450, §38 (AMD). 1989, c. 503, §B152 (AMD). 1993, c. 600, §A260 (AMD). 1995, c. 397, §89 (AMD). 2007, c. 402, Pt. W, §1 (AMD). 2013, c. 246, Pt. B, §18 (AMD).

§9704. BOARD OF RESPIRATORY CARE PRACTITIONERS; POWERS AND DUTIES

1. **Powers.** The board shall administer and enforce this chapter and evaluate the qualifications of applicants for licensure.

[2007, c. 402, Pt. W, §2 (AMD) .]

2. **Rules.** The board may, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, adopt rules to carry out the policy of this chapter, including, but not limited to, rules relating to professional licensure, professional conduct, continuing education, approval of continuing education programs and to the establishment of ethical standards of practice for persons holding a license to practice respiratory care in this State. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2007, c. 402, Pt. W, §2 (AMD) .]

3. **Hearings.**

[2007, c. 402, Pt. W, §2 (RP) .]

4. **Records.**

[2007, c. 402, Pt. W, §2 (RP) .]

5. **Contracts.**

[1995, c. 397, §90 (RP) .]

6. **Reports.**

[2007, c. 402, Pt. W, §2 (RP) .]

7. **Employees.**

[1995, c. 397, §91 (RP) .]

8. **Budget.**

[1995, c. 397, §92 (RP) .]

SECTION HISTORY
1985, c. 288, §3 (NEW). 1985, c. 785, §B145 (AMD). 1989, c. 450, §39 (AMD). 1995, c. 397, §§90-92 (AMD). 2007, c. 402, Pt. W, §2 (AMD).

§9705. LICENSE REQUIRED

1. **License required.** An individual may not practice or represent that individual as authorized to practice as a respiratory care practitioner in this State or use the words "respiratory care practitioner" or other words or letters to indicate that the person is a licensed respiratory care practitioner, unless that individual is licensed in accordance with this chapter. A respiratory therapist licensed in accordance with this chapter may use the initials "R.R.T." A respiratory care technician licensed in accordance with this chapter may use the initials "C.R.T." An individual who holds a temporary license in accordance with this chapter may use the initials "G.R.T." until the individual has taken and passed the examination or until the term of the license has expired. A student or trainee may use the initials "S.R.T." while enrolled in the clinical portion of a respiratory care education program.

[1999, c. 386, Pt. S, §1 (AMD) .]

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

[1985, c. 288, §3 (NEW) .]

3. **Unlicensed practice.** A person who violates this section is subject to the provisions of Title 10, section 8003-C.

[2007, c. 402, Pt. W, §3 (AMD) .]

SECTION HISTORY
1985, c. 288, §3 (NEW). 1997, c. 210, §12 (AMD). 1999, c. 386, §S1 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 402, Pt. W, §3 (AMD).

§9705-A. ASSOCIATE LICENSE REQUIRED

A person may not perform respiratory care services in association with a respiratory care practitioner licensed under this chapter unless that individual is approved by the board in accordance with this section. [1999, c. 386, Pt. S, §2 (NEW).]

1. **Licensed in another state.** The associate shall file verification that the associate holds a valid license in good standing from another state that has licensure requirements equivalent to the requirements of this chapter.

[1999, c. 386, Pt. S, §2 (NEW) .]

2. **Certified or registered.** The associate must be certified or registered by the National Board of Respiratory Care or its successor or other organization approved by the board and must reside in a nonlicensure state.

[2007, c. 402, Pt. W, §4 (AMD) .]

At the time of application, the associate must report the dates and locations that respiratory care services will be performed in this State, which may not exceed 30 days in a calendar year. If the board determines that the applicant meets the requirements of this section, it may issue an associate license upon payment of a fee as set under section 9710. [2007, c. 402, Pt. W, §4 (AMD).]

SECTION HISTORY
1999, c. 386, §S2 (NEW). 2007, c. 402, Pt. W, §4 (AMD).

§9706. PERSONS AND PRACTICES EXEMPT

(REPEALED)

SECTION HISTORY
1985, c. 288, §3 (NEW). 1989, c. 450, §40 (RP).

§9706-A. PERSONS AND PRACTICES EXEMPT

Nothing in this chapter may be construed as preventing or restricting the practice, services or activities of: [1989, c. 450, §41 (NEW).]

1. **Licensed or credentialed persons.** Any health care personnel licensed by this State or who currently hold a nationally recognized credential in a health care profession engaging in the delivery of respiratory care services for which they have been formally trained. That training must include supervised preclinical didactic and laboratory activities and supervised clinical activities and must be approved by the board or an accrediting agency recognized by the board. It also must include an evaluation of competence through a standardized testing mechanism that is determined by the board to be both valid and reliable;

[1991, c. 717, §1 (AMD) .]

2. **Students.** The delivery of respiratory care services by students as an integral part of the study program of students enrolled in education programs of any health care profession, as determined by board rule;

[1989, c. 450, §41 (NEW) .]

3. **Associates.**

[1999, c. 386, Pt. S, §3 (RP) .]

4. **Gratuitous care.** Family members, friends and others who give gratuitous care to a patient and do not hold themselves out as respiratory care practitioners;

[1989, c. 450, §41 (NEW) .]

5. **Self-care.** Persons who administer respiratory care to themselves;

[1989, c. 450, §41 (NEW) .]

6. **Cardiovascular testing.** Cardiovascular testing by individuals who have been issued credentials by the National Society of Cardiopulmonary Technicians, the American Cardiology Technologists Association or working in hospital-based cardiology departments;

[1989, c. 450, §41 (NEW) .]

7. **Cardiopulmonary testing.** Cardiopulmonary testing by individuals who have been issued credentials by the National Board for Respiratory Care as Certified Pulmonary Function Technologists; or

[1989, c. 450, §41 (NEW) .]

8. **Physician supervision.** The delivery of respiratory care services by individuals employed in the office and under the direct supervision and control of a physician licensed to practice by the State.

[1989, c. 450, §41 (NEW) .]

SECTION HISTORY
1989, c. 450, §41 (NEW). 1991, c. 717, §1 (AMD). 1999, c. 386, §S3 (AMD).

§9707. TEMPORARY LICENSE

No more than one temporary license may be granted to a person who has completed the education requirements of this chapter. This license allows the holder to practice respiratory care under the supervision of a licensed respiratory care practitioner. This license must be issued for a term of 90 days and may be extended for an additional 90 days at the discretion of the board. [2011, c. 286, Pt. I, §1 (AMD).]

SECTION HISTORY
1985, c. 288, §3 (NEW). 1989, c. 450, §42 (AMD). 2011, c. 286, Pt. I, §1 (AMD).

§9707-A. RESPIRATORY CARE PRACTITIONER TRAINEE LICENSE

The board may license student employees as respiratory care practitioner trainees as defined under section 9702, subsection 7, and adopt rules for that license. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2007, c. 402, Pt. W, §5 (AMD).]

SECTION HISTORY
1989, c. 450, §43 (NEW). 2007, c. 402, Pt. W, §5 (AMD).

§9708. REQUIREMENTS FOR LICENSURE; LEVELS OF LICENSURE

An applicant applying for a license as a respiratory care practitioner shall file a written application provided by the board, showing to the satisfaction of the board that he meets the following requirements. [1985, c. 288, §3 (NEW).]

1. **Residence.**

[1989, c. 450, §44 (RP) .]

2. **Ethical practice.** An applicant must exhibit trustworthiness and competence.

[2007, c. 402, Pt. W, §6 (AMD) .]

3. **Education and qualifications.** An applicant shall present evidence satisfactory to the board that:

A. For a license as a respiratory therapist:

(1) The applicant is presently credentialed by the National Board for Respiratory Care or its successor or other organization approved by the board as a registered respiratory therapist; or

(2) The applicant:

(a) Is a graduate of an educational program for respiratory therapists which is recognized by the board and accredited by the American Medical Association in collaboration with the Joint Review Committee for Respiratory Therapy Education; and

(b) Has passed an examination as provided for in section 9709; or [2007, c. 402, Pt. W, §7 (AMD).]

B. For a license as a respiratory care technician:

(1) The applicant is presently credentialed by the National Board for Respiratory Care as a certified respiratory therapy technician; or

(2) The applicant:

(a) Is a graduate of an educational program for respiratory therapists or respiratory care technicians which is recognized by the board and accredited by the American Medical Association in collaboration with the Joint Review Committee for Respiratory Therapy Education; and

(b) Has passed an examination as provided for in section 9709. [1985, c. 288, §3 (NEW).]

[2007, c. 402, Pt. W, §7 (AMD) .]

4. **Restrictions.** A respiratory care practitioner trainee shall not perform invasive procedures or procedures related to critical respiratory care, including therapeutic, diagnostic and palliative procedures. Respiratory care practitioner trainees shall only perform services under the on-site supervision of a licensed respiratory care practitioner.

[1989, c. 450, §45 (NEW) .]

SECTION HISTORY
1985, c. 288, §3 (NEW). 1989, c. 450, §§44,45 (AMD). 2007, c. 402, Pt. W, §§6, 7 (AMD).

§9709. EXAMINATION FOR LICENSURE

1. **Requirements.** Only a person satisfying the requirements of this chapter may apply for examination in such a manner as the board prescribes.

[1985, c. 288, §3 (NEW) .]

2. **Content.** Written examinations shall be designed or adopted by the board and shall test the applicant's knowledge of the basic and clinical sciences relating to respiratory care, respiratory care techniques and methods and such other subjects as the board may include to determine the applicant's fitness to practice.

[1985, c. 288, §3 (NEW) .]

3. **Time and place.**

[2007, c. 402, Pt. W, §8 (RP) .]

SECTION HISTORY
1985, c. 288, §3 (NEW). 2007, c. 402, Pt. W, §8 (AMD).

§9710. FEES

The Director of the Office of Professional and Occupational Regulation within the department may establish by rule fees for purposes authorized under this chapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for any one purpose may not exceed $135 biennially. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [2007, c. 402, Pt. W, §9 (NEW); 2011, c. 286, Pt. B, §5 (REV).]

SECTION HISTORY
1985, c. 288, §3 (NEW). 1989, c. 450, §46 (AMD). 1991, c. 509, §30 (AMD). 1995, c. 502, §H40 (AMD). 1999, c. 386, §S4 (AMD). 2007, c. 402, Pt. W, §9 (RPR). 2011, c. 286, Pt. B, §5 (REV).

§9711. ISSUANCE OF LICENSE

(REPEALED)

SECTION HISTORY
1985, c. 288, §3 (NEW). 2007, c. 402, Pt. W, §10 (RP).

§9712. TERM OF LICENSES

1. **Biennial renewal.** Licenses expire biennially on April 30th or on such other date as the commissioner determines.

Licenses may be renewed up to 90 days after the date of expiration upon payment of a late fee in addition to the required renewal fee as set under section 9710. A person who submits an application for renewal more than 90 days after the license renewal date is subject to all requirements governing new applicants under this chapter, except that the board may, giving due consideration to the protection of the public, waive examination if that renewal application is received, together with the late fee and renewal fee, within 2 years from the date of that expiration.

[2007, c. 402, Pt. W, §11 (AMD) .]

2. **Continuing education.**

[2007, c. 402, Pt. W, §11 (RP) .]

3. **Transition.**

[2007, c. 402, Pt. W, §11 (RP) .]

SECTION HISTORY
1985, c. 288, §3 (NEW). 1989, c. 450, §§47,48 (AMD). 2007, c. 402, Pt. W, §11 (AMD).

§9713. DENY OR REFUSE TO RENEW LICENSE; DISCIPLINARY ACTION

The board may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A for any of the reasons enumerated in Title 10, section 8003, subsection 5-A, paragraph A. [2007, c. 402, Pt. W, §12 (NEW).]

SECTION HISTORY
1985, c. 288, §3 (NEW). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 402, Pt. W, §12 (RPR).

Chapter 99: FINANCIAL PLANNERS

§9751. DECLARATION OF PURPOSE

It is the purpose of this chapter to assure that when a financial planner makes a recommendation to a consumer on investment of financial resources, the planner makes full disclosure of any financial interest he may have in recommending certain investments. A consumer can make truly informed investment decisions only if he has full information on the planner's biases and interests. [1985, c. 235, (NEW).]

SECTION HISTORY
1985, c. 235, (NEW).

§9752. DEFINITIONS

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings. [1985, c. 235, (NEW).]

1. **Consumer.** "Consumer" means an individual.

[1985, c. 235, (NEW) .]

2. **Financial planner.** "Financial planner" means a person who provides a variety of services, principally advisory in nature, to consumers with respect to management of financial resources based upon an analysis of individual consumer needs.

"Financial planner" includes, but is not limited to, those persons who designate themselves financial analysts, advisors, consultants or planners, financial management advisors, securities or investment analysts, estate planners or other such terms.

"Financial planner" does not include employees of financial institutions authorized to do business in this State, as defined in Title 9-B, section 131, subsection 17-A.

[1985, c. 235, (NEW) .]

3. **Person.** "Person" means any individual, partnership, unincorporated organization, corporation or any employee or agent of a partnership, unincorporated organization or corporation.

[1985, c. 235, (NEW) .]

SECTION HISTORY
1985, c. 235, (NEW).

§9753. DISCLOSURE REQUIRED

If a person represents himself as a financial planner recommends that a consumer invest financial resources in an investment and the financial planner has any direct or indirect interest in that investment or has any potential of direct or indirect financial gain if the consumer invests his resources in that investment, then the financial planner shall fully disclose to the consumer the existence of that interest or potential gain. This duty to disclose extends to commissions, fees, referral fees or other compensation the financial planner may receive if the consumer makes the investment. [1985, c. 235, (NEW).]

SECTION HISTORY
1985, c. 235, (NEW).

§9754. ENFORCEMENT

Any person who violates this chapter commits a civil violation for which a forfeiture not to exceed $100 may be adjudged in the case of a first violation and a forfeiture not to exceed $500 may be adjudged in the case of 2nd and subsequent violations. [1985, c. 235, (NEW).]

SECTION HISTORY
1985, c. 235, (NEW).

Chapter 103: MEDICAL RADIATION HEALTH AND SAFETY ACT

§9851. FINDINGS

The Legislature finds that the citizens of this State are entitled to the maximum protection practicable from the harmful effects of excessive and improper exposure to ionizing radiation; that the protection can be increased by requiring appropriate education and training of persons operating medical and dental equipment emitting ionizing radiation; and that it is therefore necessary to establish standards of education, training and experience for these operators, to provide for the appropriate examination and licensure and to emphasize the professional nature of the service. [1983, c. 524, (NEW).]

SECTION HISTORY
1983, c. 524, (NEW).

§9852. DEFINITIONS

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings. [1983, c. 524, (NEW).]

1. **Board.** "Board" means the Radiologic Technology Board of Examiners.

[1983, c. 524, (NEW) .]

2. **Dental radiographer.** "Dental radiographer" means a person, other than a licensed practitioner, whose duties include radiography of the maxilla, mandible and adjacent structures for diagnostic purposes and who is licensed under chapter 16.

[1983, c. 524, (NEW) .]

3. **Ionizing radiation.** "Ionizing radiation" means gamma rays and x rays; alpha and beta particles, high-speed electrons, neutrons, protons and other nuclear particles; but not ultrasound, sound or radio waves, magnetic fields or visible, infrared or ultraviolet light.

[2005, c. 511, §1 (AMD) .]

4. **License.** "License" means a certificate issued by the board authorizing the licensee to use radioactive materials or equipment emitting ionizing radiation on human beings for diagnostic or therapeutic purposes in accordance with the provisions of this Act.

[1983, c. 524, (NEW) .]

4-A. **Licensed physician.** "Licensed physician" means a person licensed to practice medicine or osteopathy in this State.

[2005, c. 511, §1 (NEW) .]

5. **Licensed practitioner.** "Licensed practitioner" means a person licensed to practice medicine, dentistry, chiropractic, podiatry or osteopathy in this State.

[1983, c. 524, (NEW) .]

6. **Nuclear medicine technologist.** "Nuclear medicine technologist" means a person, other than a licensed practitioner, who uses radionuclide agents on human beings for diagnostic and therapeutic purposes.

[2005, c. 511, §1 (AMD) .]

7. **Nuclear medicine technology.** "Nuclear medicine technology" means the use of radionuclides on human beings for diagnostic and therapeutic purposes under the supervision of a licensed physician. The use of radionuclides on human beings for diagnostic and therapeutic purposes includes the use of dual imaging devices. For purposes of this subsection, "use" means all activities involved in the application of radioactive material. These activities include, but are not limited to, adjusting equipment settings, positioning the patient, positioning the equipment and positioning the image receptor.

[2005, c. 511, §1 (AMD) .]

8. **Radiation therapist.** "Radiation therapist" means a person, other than a licensed practitioner, who applies ionizing radiation to human beings for therapeutic and simulation purposes, excluding the administration of radiopharmaceuticals.

[2005, c. 511, §1 (AMD) .]

9. **Radiation therapy technology.** "Radiation therapy technology" means the use of ionizing radiation on human beings for therapeutic and simulation purposes, excluding the administration of radiopharmaceuticals, under the supervision of a licensed physician. For purposes of this subsection, "use" means all activities involved in the application of ionizing radiation. These activities include, but are not limited to, adjusting equipment settings, positioning the patient, positioning the equipment and positioning the image receptor.

[2005, c. 511, §1 (AMD) .]

10. **Radiographer.** "Radiographer" means a person, other than a licensed practitioner, who applies ionizing radiation to human beings for imaging purposes, excluding the administration of radiopharmaceuticals.

[2005, c. 511, §1 (AMD) .]

11. **Radiography.** "Radiography" means the use of ionizing radiation on human beings for imaging purposes, excluding the administration of radiopharmaceuticals, under the supervision of a licensed practitioner. For purposes of this subsection, "use" means all activities involved in the application of ionizing radiation. These activities include, but are not limited to, adjusting equipment settings, positioning the patient, positioning the equipment and positioning the image receptor.

[2005, c. 511, §1 (AMD) .]

12. **Radiologic technologist.** "Radiologic technologist" means any person who is a radiographer, a radiation therapist or a nuclear medicine technologist licensed under this chapter.

[2005, c. 511, §1 (AMD) .]

13. **Radiologic technology.** "Radiologic technology" means the use of a radioactive substance or equipment emitting ionizing radiation on human beings for diagnostic or therapeutic purposes.

[1983, c. 524, (NEW) .]

14. **Radiological physicist.** "Radiological physicist" means a person who has successfully completed education and training in medical radiological physics or one of the subspecialties of radiological physics.

[2005, c. 511, §1 (AMD) .]

15. **Radiologist.** "Radiologist" means a physician, certified by the American Board of Radiology or the American Osteopathic Board of Radiology, the British Royal College of Radiology or the Royal College of Physicians and Surgeons, who is licensed in this State or who has completed or who is actively pursuing the course of training equivalent to the course of training required for admission to these boards.

[1983, c. 524, (NEW) .]

16. **Radiopharmaceutical.** "Radiopharmaceutical" means a radioactive substance approved for administration to a patient to provide diagnostic information or deliver treatment for a specific disease.

[2005, c. 511, §1 (NEW) .]

SECTION HISTORY
1983, c. 524, (NEW). 2005, c. 511, §1 (AMD).

§9853. RADIOLOGIC TECHNOLOGY BOARD OF EXAMINERS

The Radiologic Technology Board of Examiners, as authorized by Title 5, chapter 379, shall administer this chapter. The board consists of 9 members appointed by the Governor. [1999, c. 687, Pt. E, §7 (AMD).]

1. **Appointment and membership.** The membership of the board consists of 2 radiologists; 2 radiographers; one nuclear medicine technologist; one radiation therapist; one radiation physicist; and 2 public members as defined in Title 5, section 12004-A. The Governor may appoint these members from lists submitted by the following organizations or their successors.

A. Radiologist members may be appointed from lists submitted by the Maine Radiological Society. [1983, c. 524, (NEW).]

B. The radiation physicist member may be appointed from lists submitted by the Maine Radiological Society. [1999, c. 687, Pt. E, §8 (AMD).]

C. Radiologic technologist members may be appointed from lists submitted by the Maine Society of Radiologic Technologists, the Society of Nuclear Medicine Technologists and the New England Society of Radiation Therapy Technologists. [1983, c. 524, (NEW).]

D. [1999, c. 687, Pt. E, §8 (RP).]

E. [1999, c. 687, Pt. E, §8 (RP).]

The list submitted by each organization must include at least 2 names for each position to be filled from that organization.

[2007, c. 402, Pt. X, §1 (AMD) .]

2. **Term of office.** The term of office is 3 years. Appointments of members must comply with Title 10, section 8009.

A member may be removed by the Governor for cause.

[2007, c. 402, Pt. X, §1 (AMD) .]

3. **Meetings; chair.** 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.

[2013, c. 1, §49 (COR) .]

4. **Compensation.**

[1995, c. 397, §93 (RP) .]

5. **Quorum.**

[2013, c. 246, Pt. B, §19 (RP) .]

6. **Powers and duties.** The board has the following powers and duties:

A. To review the qualifications of applicants for licensure and to license radiographers, nuclear medicine technologists and radiation therapists who qualify under this chapter; [2005, c. 511, §3 (AMD).]

B. To approve the qualifying examinations for radiographers, nuclear medicine technologists and radiation therapists, and to establish passing standards; [2007, c. 402, Pt. X, §1 (AMD).]

C. To develop, in consultation with representatives of the appropriate disciplines, requirements for courses of study, training and examination for applicants for a limited license; and [2007, c. 402, Pt. X, §1 (AMD).]

D. [2007, c. 402, Pt. X, §1 (RP).]

E. To make rules in accordance with this chapter necessary for the enforcement of its authority and performance of its duties consistent with the Maine Administrative Procedure Act, Title 5, chapter 375. These rules may include, but not be limited to, licensing requirements, approved courses, examinations and continuing education requirements for renewal of licenses. [2007, c. 402, Pt. X, §1 (AMD).]

F. [2007, c. 402, Pt. X, §1 (RP).]

G. [2007, c. 402, Pt. X, §1 (RP).]

H. [2007, c. 402, Pt. X, §1 (RP).]

I. [2007, c. 402, Pt. X, §1 (RP).]

J. [1995, c. 397, §95 (RP).]

[2007, c. 402, Pt. X, §1 (AMD) .]

SECTION HISTORY
1983, c. 524, (NEW). 1985, c. 295, §§48,49 (AMD). 1985, c. 748, §42 (AMD). 1993, c. 600, §A261 (AMD). 1995, c. 397, §§93-95 (AMD). 1999, c. 687, §§E7-9 (AMD). 2001, c. 323, §27 (AMD). 2005, c. 511, §§2-4 (AMD). 2007, c. 402, Pt. X, §1 (AMD). RR 2013, c. 1, §49 (COR). 2013, c. 246, Pt. B, §19 (AMD).

§9854. LICENSE REQUIRED; EXCEPTIONS

1. **License required.** A person may not practice or profess to be authorized to practice after September 1, 1984, as a radiographer, a nuclear medicine technologist or a radiation therapist unless that person is licensed in accordance with the provisions of this chapter.

[2009, c. 112, Pt. A, §15 (AMD) .]

2. **Effect of Act.** Nothing in this Act may limit, enlarge or affect the practice of licensed practitioners.

[1983, c. 524, (NEW) .]

3. **Exceptions.** The requirement of a license shall not apply to:

A. A dental hygienist licensed under chapter 16, subchapter IV; [1983, c. 524, (NEW).]

B. A dental assistant holding a valid license or certificate issued by the Maine State Board of Dental Examiners as a dental radiographer; [1983, c. 524, (NEW).]

C. A resident physician or a student enrolled in and attending a school or college of medicine, osteopathy, chiropractic, podiatry, dentistry or radiologic technology or an individual who is concurrently obtaining the education and clinical training required by the board by rule who applies ionizing radiation to a human being while under the supervision of a licensed practitioner; or [2005, c. 166, §1 (AMD).]

D. Any person serving in the United States Armed Services or public health service or employed by the Veterans' Administration or other federal agency performing his official duties, provided that the duties are limited to that service or employment. [1983, c. 524, (NEW).]

[2005, c. 166, §1 (AMD) .]

SECTION HISTORY
1983, c. 524, (NEW). 2005, c. 166, §1 (AMD). 2005, c. 511, §5 (AMD). 2009, c. 112, Pt. A, §15 (AMD).

§9855. QUALIFICATIONS

1. **Radiographer.** To qualify for a license as a radiographer, an applicant must meet the following requirements:

A. Be at least 18 years of age; [2005, c. 511, §6 (RPR).]

B. Have a high school diploma or its equivalent as determined by the Department of Education; and [2005, c. 511, §6 (RPR).]

C. Either have successfully completed a course of study in radiologic technology and an examination that is approved by the board or possess valid certification and current registration from the American Registry of Radiologic Technologists, or another certification program approved by the board to practice as a radiographer. [2005, c. 511, §6 (RPR).]

D. [2005, c. 511, §6 (RP).]

[2005, c. 511, §6 (RPR) .]

2. **Nuclear medicine technologist.** To qualify for a license as a nuclear medicine technologist, an applicant must meet the following requirements:

A. Be at least 18 years of age; [2005, c. 511, §6 (RPR).]

B. Have a high school diploma or its equivalent as determined by the Department of Education; and [2005, c. 511, §6 (RPR).]

C. Either have successfully completed a nuclear medicine technology program and an examination that is approved by the board or possess valid certification and current registration from the American Registry of Radiologic Technologists, the Nuclear Medicine Technology Certification Board or another certification program approved by the board to practice as a nuclear medicine technologist. [2005, c. 511, §6 (RPR).]

D. [2005, c. 511, §6 (RP).]

[2005, c. 511, §6 (RPR) .]

3. **Radiation therapist.** To qualify for a license as a radiation therapist, an applicant must meet the following requirements:

A. Be at least 18 years of age; [2005, c. 511, §6 (RPR).]

B. Have a high school diploma or its equivalent as determined by the Department of Education; and [2005, c. 511, §6 (RPR).]

C. Either have successfully completed a course in radiation therapy technology and an examination that is approved by the board or possess valid certification and current registration from the American Registry of Radiologic Technologists or its successor or other organization or another certification program approved by the board to practice as a radiation therapist. [2009, c. 112, Pt. A, §16 (AMD).]

D. [2005, c. 511, §6 (RP).]

[2009, c. 112, Pt. A, §16 (AMD) .]

4. **Limited radiographer license.** For those applicants wishing to be licensed only for the limited purpose of using ionizing radiation for imaging purposes in the office of a licensed practitioner or for physician assistants practicing under section 3270-A or nurses practicing under section 2102, subsection 2, paragraph C in a clinic not required to be licensed under Title 22, chapter 405, the board shall grant a limited license and shall, in approving a course of study, training and examination for these applicants, consider the limited scope of practice of the various disciplines. Those aspects of study, training and examination relating to patient safety must be identical to the requirements for a full license.

[2005, c. 511, §6 (RPR) .]

SECTION HISTORY
1983, c. 524, (NEW). 1989, c. 700, §§A156-158 (AMD). 2005, c. 511, §6 (RPR). 2007, c. 402, Pt. X, §2 (AMD). 2009, c. 112, Pt. A, §16 (AMD).

§9856. APPLICATION; FEES

1. **Application for license.** To apply for a license as a radiographer, nuclear medicine technologist, radiation therapy technologist or for a limited license, an applicant shall:

A. Submit a written application with supporting documents to the board; [2007, c. 402, Pt. X, §3 (AMD).]

B. Pay the application fee as set under section 9859-A; and [2007, c. 402, Pt. X, §3 (AMD).]

C. Pay an examination fee as set under section 9859-A. [2007, c. 402, Pt. X, §3 (AMD).]

[2007, c. 402, Pt. X, §3 (AMD) .]

2. **Denial of application.** In case the application is denied and permission to take the examination is refused, the examination fee only is returned to the applicant. Any applicant who fails to pass the examination is entitled to reexamination within 6 months upon repayment of the examination fee only. Pursuant to section 9858, the board may issue a temporary license to an applicant who has failed an examination and is awaiting reexamination upon receipt of the fee as set under section 9859-A; the temporary license expires at such time as the board may by rule direct.

[2007, c. 402, Pt. X, §3 (AMD) .]

SECTION HISTORY
1983, c. 524, (NEW). 1983, c. 816, §A39 (RPR). 2001, c. 323, §28 (AMD). 2007, c. 402, Pt. X, §3 (AMD).

§9857. NONRESIDENTS; APPLICANTS LICENSED IN ANOTHER JURISDICTION

1. **Reciprocal agreements.** The board may enter into reciprocal agreements with other jurisdictions that have substantially similar licensure laws and accord substantially equal reciprocal rights to residents licensed in good standing in this State.

[2005, c. 511, §7 (NEW) .]

2. **Applicants licensed in another jurisdiction.** An applicant who is licensed under the laws of another jurisdiction is governed by this subsection.

A. An applicant who is licensed under the laws of a jurisdiction that has a reciprocal agreement with the board may obtain a license under the terms and conditions agreed upon through the reciprocal agreement. [2005, c. 511, §7 (NEW).]

B. An applicant who is licensed in good standing at the time of application to the board under the laws of a jurisdiction that has not entered into a reciprocal agreement with the board may qualify for licensure by submitting evidence to the board that the applicant has actively practiced with a substantially equivalent license or by submitting evidence that the applicant's qualifications for licensure are substantially similar to those requirements in this chapter. [2005, c. 511, §7 (NEW).]

C. All nonresident applicants must submit with the application an irrevocable consent to service of process on the applicant for an action filed in a court of this State arising out of the applicant's activities as a licensee in this State. Service may be made by delivery of the process to the Director of Licensing and Registration within the Department of Professional and Financial Regulation if, in the exercise of due diligence, a plaintiff cannot effect personal service upon the applicant. [2005, c. 511, §7 (NEW).]

[2005, c. 511, §7 (NEW) .]

SECTION HISTORY
1983, c. 524, (NEW). 2005, c. 511, §7 (RPR).

§9858. TEMPORARY LICENSES; SPECIAL PERMITS

1. **Temporary licenses.** The board may issue a temporary license to any person whose application for licensure is pending before the board when issuance is justified by special circumstances and no danger to the public health or safety exists. A temporary license shall be issued only once and shall expire either when the results of the next examination administered by the board are known, if the applicant is required to take

that examination, or 90 days following issuance of the temporary license. An exception may be made if the applicant fails the examination administered by the board. In that case, another temporary license may be issued and shall expire at such time as the board may by rule direct.

[1983, c. 672, (NEW) .]

2. **Special permits.** Upon special application by an individual, the board may issue a special permit to practice as a nuclear medicine technologist subject to the following conditions:

A. The applicant must possess a Maine license that is current and in good standing to practice as a radiographer; [2005, c. 511, §8 (AMD).]

B. The board finds to its satisfaction that there is substantial evidence that the people in the locality of the state in which such exemption is sought would be denied adequate medical care because of unavailability of certified licensed practitioners or persons holding certificates pursuant to this chapter; and [1983, c. 672, (NEW).]

C. The special permit shall be granted for limited periods of time, not to exceed one year, at which time the applicant shall be eligible for examination and licensure under this chapter. [1983, c. 672, (NEW).]

[2005, c. 511, §8 (AMD) .]

SECTION HISTORY
1983, c. 524, (NEW). 1983, c. 672, (RPR). 2005, c. 511, §8 (AMD).

§9859. LICENSURE RENEWAL; FEES

An original or renewal license fee as set under section 9859-A must be paid by the applicant or licensee. All licenses must be renewed as the Commissioner of Professional and Financial Regulation may designate, as set forth in Title 10, section 8003, subsection 4. Any license not renewed by the designated renewal date automatically expires. Licenses may be renewed up to 90 days after the date of expiration upon payment of a late fee and renewal fee as set under section 9859-A. Any person who submits an application for renewal more than 90 days after the licensing renewal date must submit a renewal fee, late fee and additional late fee as set under section 9859-A and is subject to all requirements governing new applicants under this chapter, except that the board may, giving due consideration to the protection of the public, waive examination or other requirements. [2007, c. 402, Pt. X, §4 (AMD).]

SECTION HISTORY
1983, c. 524, (NEW). 1991, c. 509, §31 (AMD). 2001, c. 323, §29 (AMD). 2005, c. 511, §9 (AMD). 2007, c. 402, Pt. X, §4 (AMD).

§9859-A. FEES

The Director of the Office of Professional and Occupational Regulation within the Department of Professional and Financial Regulation may establish by rule fees for purposes authorized under this chapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for any one purpose may not exceed $100 biennially. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A. [2001, c. 323, §30 (NEW); 2011, c. 286, Pt. B, §5 (REV).]

SECTION HISTORY
2001, c. 323, §30 (NEW). 2011, c. 286, Pt. B, §5 (REV).

§9860. DISCIPLINARY ACTION

(REPEALED)

SECTION HISTORY
1983, c. 524, (NEW). 1993, c. 600, §A262 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 402, Pt. X, §5 (RP).

§9860-A. DENIAL OR REFUSAL TO RENEW LICENSE; DISCIPLINARY ACTION

In addition to the grounds enumerated in Title 10, section 8003, subsection 5-A, paragraph A, the board may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A for: [2007, c. 402, Pt. X, §6 (NEW).]

1. **Substance abuse.** Habitual substance abuse or abuse of other drugs listed as controlled substances by the drug enforcement administration that has resulted or is foreseeably likely to result in the licensee performing services in a manner that endangers the health or safety of patients; or

[2007, c. 402, Pt. X, §6 (NEW) .]

2. **Mental incompetence.** A medical finding of mental incompetency.

[2007, c. 402, Pt. X, §6 (NEW) .]

SECTION HISTORY
2007, c. 402, Pt. X, §6 (NEW).

§9861. UNLICENSED PRACTICE

1. **Penalties.** Any person who violates section 9854 is subject to the provisions of Title 10, section 8003-C.

[2007, c. 402, Pt. X, §7 (AMD) .]

2. **Injunction.**

[2007, c. 402, Pt. X, §7 (RP) .]

SECTION HISTORY
1983, c. 524, (NEW). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 402, Pt. X, §7 (AMD).

§9862. FUNDS

(REPEALED)

SECTION HISTORY
1983, c. 524, (NEW). 1995, c. 397, §96 (RP).

Chapter 104: DIETITIANS

§9901. DECLARATION OF PURPOSE

In order to recognize the professional qualifications of dietitians and dietetic technicians and to assure the availability to the public of information regarding those who hold themselves out to be dietitians and dietetic technicians, it is the purpose of this chapter to provide for the licensing of qualified dietitians and dietetic technicians. [1987, c. 313, §1 (AMD).]

SECTION HISTORY
1985, c. 389, §28 (NEW). 1987, c. 313, §1 (AMD).

§9902. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1985, c. 389, §28 (NEW).]

1. **Board.** "Board" means the Board of Licensing of Dietetic Practice established under this chapter.

[1987, c. 313, §2 (AMD) .]

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

[1985, c. 389, §28 (NEW) .]

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

[1985, c. 389, §28 (NEW) .]

4. **Dietetics.** "Dietetics" means the professional discipline of assessing the nutritional needs of an individual, including recognition of the effects of the individual's physical condition and economic circumstances, and the applying of scientific principles of nutrition to prescribing means to ensure the individual's proper nourishment and care.

[1985, c. 389, §28 (NEW) .]

5. **Licensed dietetic technician.** "Licensed dietetic technician" means a person licensed under this chapter who practices dietetics under the supervision of a dietitian who is licensed in accordance with this chapter.

[1995, c. 402, Pt. A, §27 (AMD) .]

6. **Licensed dietitian.** "Licensed dietitian" means a person who practices dietetics and who is licensed as a dietitian under this chapter.

[1987, c. 313, §2 (AMD) .]

SECTION HISTORY
1985, c. 389, §28 (NEW). 1987, c. 313, §2 (AMD). 1995, c. 402, §A27 (AMD).

§9903. BOARD OF LICENSING OF DIETETIC PRACTICE; ESTABLISHMENT; COMPENSATION

1. **Establishment and membership.** There is established, within the department, the Board of Licensing of Dietetic Practice. The board consists of 5 members appointed by the Governor, including 2 public members as defined in Title 5, section 12004-A. Other than these public members, the persons appointed to the board must have been engaged in rendering dietetic services to the public or in teaching or research in dietetics for at least 2 years immediately preceding their appointments. Two board members must be dietitians. The 5th member must be a dietetic technician. The professional members must at all times be holders of valid licenses under this chapter, except for the members of the first board, each of whom must fulfill the requirements for licensing under this chapter.

[2007, c. 402, Pt. Y, §1 (AMD) .]

2. **Terms of appointment.** Appointments are for 3-year terms. Appointments of members must comply with Title 10, section 8009. A member of the board may be removed from office for cause by the Governor.

[2007, c. 402, Pt. Y, §1 (AMD) .]

3. **Meetings; chair.** 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.

[2013, c. 246, Pt. B, §20 (AMD) .]

4. **Compensation.**

[1995, c. 625, Pt. A, §39 (RP) .]

SECTION HISTORY
1985, c. 389, §28 (NEW). 1987, c. 313, §3 (AMD). 1993, c. 600, §A263 (AMD). 1995, c. 397, §97 (AMD). 1995, c. 402, §§A28,29 (AMD). 1995, c. 402, §A29 (AMD). 1995, c. 625, §A39 (AMD). 2007, c. 402, Pt. Y, §1 (AMD). 2013, c. 246, Pt. B, §20 (AMD).

§9904. BOARD OF LICENSING OF DIETETIC PRACTICE; POWERS AND DUTIES

1. **Powers.** The board shall administer and enforce this chapter.

[2007, c. 402, Pt. Y, §2 (AMD) .]

2. **Rules.** The board may adopt, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, rules relating to professional conduct to carry out the policy of this chapter, including, but not limited to, rules relating to professional licensing and to the establishment of ethical standards of practice for persons licensed to practice dietetics in this State.

[1987, c. 313, §3 (AMD) .]

3. **Hearings.**

[2007, c. 402, Pt. Y, §2 (RP) .]

4. **Records.**

[2007, c. 402, Pt. Y, §2 (RP) .]

5. **Contracts.**

[1995, c. 397, §98 (RP) .]

6. **Reports.**

[2007, c. 402, Pt. Y, §2 (RP) .]

SECTION HISTORY
1985, c. 389, §28 (NEW). 1987, c. 313, §3 (AMD). 1995, c. 397, §98 (AMD). 1995, c. 402, §A30 (AMD). 2007, c. 402, Pt. Y, §2 (AMD).

§9905. BOARD OF LICENSING OF DIETETIC PRACTICE; ADMINISTRATIVE PROVISIONS

(REPEALED)

SECTION HISTORY
1985, c. 389, §28 (NEW). 1985, c. 785, §B146 (AMD). 1987, c. 313, §4 (AMD). 1995, c. 397, §99 (RP).

§9906. LICENSING

1. **Licensing required.** A person may not practice dietetics or claim to be a dietitian or a dietetic technician unless that person is licensed in accordance with this chapter.

[1995, c. 402, Pt. A, §31 (AMD) .]

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

[1987, c. 313, §5 (AMD) .]

3. **Penalty.** A person who violates this section is subject to the provisions of Title 10, section 8003-C.

[2007, c. 402, Pt. Y, §3 (AMD) .]

SECTION HISTORY
1985, c. 389, §28 (NEW). 1987, c. 313, §5 (AMD). 1995, c. 402, §A31 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 402, Pt. Y, §3 (AMD).

§9907. QUALIFICATIONS

1. **Dietitian's licensing.** An applicant for licensing as a dietitian must file a written application showing to the satisfaction of the board that the applicant meets the following requirements.

A. The applicant must exhibit trustworthiness and competency. [2007, c. 402, Pt. Y, §4 (AMD).]

B. An applicant must present evidence satisfactory to the board of having successfully completed the academic requirements established by the American Dietetic Association or equivalent requirements as determined by the board and must have received a baccalaureate or higher degree from an accredited

college or university. As part of the applicant's professional education , the applicant must have completed courses in organic and inorganic chemistry, human physiology, microbiology, principles of sociology or psychology, basic communication skills, economics, food composition, nutrition and management theory. [1995, c. 402, Pt. A, §32 (AMD).]

C. An applicant must submit to the board evidence of having successfully completed the experience requirements approved by the American Dietetic Association or equivalent experience approved by the board. That experience must include at least 6 months full-time experience in the field of dietetics, or its part-time equivalent. The experience must have been acquired during or within 5 years of completion of the academic requirements in paragraph B or not more than 5 years before the date of license application. [1995, c. 402, Pt. A, §32 (AMD).]

D. The applicant must have successfully completed an examination given by the American Dietetic Association or its equivalent as determined and approved by the board. The examination requirement of this paragraph does not apply to an applicant who presents evidence of having practiced as a dietitian without censure for a period of 10 years immediately prior to September 30, 1987. [2007, c. 402, Pt. Y, §4 (AMD).]

[2007, c. 402, Pt. Y, §4 (AMD) .]

2. **Dietetic technician's licensing.** An applicant for licensing as a dietetic technician must file a written application showing to the satisfaction of the board that the applicant meets the following requirements.

A. The applicant must exhibit trustworthiness and competency. [2007, c. 402, Pt. Y, §4 (AMD).]

B. The applicant must have graduated from a dietetic technician program approved by the Commission on Accreditation of the American Dietetic Association or its equivalent, as determined by the board, or graduated with a Bachelor of Science Degree in Food and Nutrition from an approved 4-year program. [1985, c. 389, §28 (NEW).]

C. An applicant must submit to the board evidence of having successfully completed a 2-month work experience approved by the board. That experience must have been acquired during or within 5 years from completion of the academic requirements in paragraph B and not more than 5 years from the date of license application. [1995, c. 402, Pt. A, §32 (AMD).]

D. The applicant must have successfully completed an examination given by the American Dietetic Association or its equivalent as determined by the board. [1987, c. 313, §5 (NEW).]

[2007, c. 402, Pt. Y, §4 (AMD) .]

SECTION HISTORY
1985, c. 389, §28 (NEW). 1987, c. 313, §5 (AMD). 1987, c. 664, §§1,2 (AMD). 1991, c. 509, §32 (AMD). 1995, c. 402, §A32 (AMD). 2007, c. 402, Pt. Y, §4 (AMD).

§9908. ISSUANCE OF LICENSE

The board shall issue a license to any person who meets the requirements of this chapter upon payment of the fee as set under section 9911. [2007, c. 402, Pt. Y, §5 (AMD).]

SECTION HISTORY
1985, c. 389, §28 (NEW). 1987, c. 313, §5 (AMD). 2007, c. 402, Pt. Y, §5 (AMD).

§9909. TERM OF LICENSE

1. **Renewal.** A license expires annually on September 30th or such other time as the commissioner may designate.

Licenses may be renewed up to 90 days after the date of expiration upon payment of a late fee together with the additional late fee and renewal fee as set under section 9911. Any person who submits an application for renewal more than 90 days after the licensing renewal date is subject to all requirements governing new applicants under this chapter.

[2007, c. 402, Pt. Y, §6 (AMD) .]

2. **Continuing education.** Each license renewal must be accompanied by evidence of continuing education or other requirements as established in rule by the board.

[1995, c. 402, Pt. A, §33 (AMD) .]

SECTION HISTORY
1985, c. 389, §28 (NEW). 1987, c. 313, §5 (AMD). 1991, c. 509, §33 (AMD). 1995, c. 402, §A33 (AMD). 1999, c. 257, §4 (AMD). 2007, c. 402, Pt. Y, §6 (AMD).

§9910. DENIAL OR REFUSAL TO RENEW LICENSE; DISCIPLINARY ACTION

The board may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A for any of the reasons enumerated in Title 10, section 8003, subsection 5-A, paragraph A. [2007, c. 402, Pt. Y, §7 (NEW).]

SECTION HISTORY
1985, c. 389, §28 (NEW). 1987, c. 313, §6 (AMD). 1989, c. 502, §A115 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 402, Pt. Y, §7 (RPR).

§9911. FEES

The Director of the Office of Professional and Occupational Regulation may establish by rule fees for purposes authorized under this chapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for any one purpose may not exceed $200. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [2007, c. 402, Pt. Y, §8 (NEW); 2011, c. 286, Pt. B, §5 (REV).]

SECTION HISTORY
1985, c. 389, §28 (NEW). 1987, c. 313, §7 (AMD). 1991, c. 509, §34 (AMD). 1995, c. 397, §100 (AMD). 1995, c. 402, §A34 (AMD). 1995, c. 502, §H41 (AMD). 1995, c. 625, §A40 (AMD). 1999, c. 257, §5 (AMD). 2007, c. 402, Pt. Y, §8 (RPR). 2011, c. 286, Pt. B, §5 (REV).

§9912. RECIPROCITY

The board may, in its discretion, grant a license under this chapter to an individual licensed in another state if it determines that the requirements or standards for licensure in that state are equivalent to, or greater than, those established by this chapter. The board may not require an individual licensed in another state to meet requirements or standards for licensure in the State that are more stringent than requirements or standards for licensure imposed on in-state applicants. [1995, c. 402, Pt. A, §35 (AMD).]

SECTION HISTORY
1985, c. 389, §28 (NEW). 1987, c. 313, §8 (AMD). 1995, c. 402, §A35 (AMD).

§9913. EQUIVALENT REQUIREMENTS

The board shall adopt rules, as it determines necessary and appropriate, to indicate what requirements will be considered the equivalent of the specific education, experience and examination required by section 9907. [1987, c. 313, §9 (NEW).]

SECTION HISTORY
1987, c. 313, §9 (NEW).

§9914. TEMPORARY LICENSE

The board shall adopt rules establishing requirements for a temporary license within the scope of this chapter. [1987, c. 313, §9 (NEW).]

SECTION HISTORY
1987, c. 313, §9 (NEW).

§9915. PERSONS AND PRACTICES EXEMPT

Nothing in this chapter prevents the activities of: [1987, c. 313, §9 (NEW).]

1. **Licensed persons.** Any person licensed or registered in this State under any other law from engaging in the profession or occupation for which that person is licensed or registered;

[1995, c. 402, Pt. A, §36 (AMD) .]

2. **Persons giving general nutrition-related information.** Individuals who give general nutrition-related information;

[1987, c. 313, §9 (NEW) .]

3. **State and federal employees.** State and federal employees in state or federally funded cooperative extension food and nutrition programs and supplemental food and nutrition programs for women, infants and children;

[1987, c. 313, §9 (NEW) .]

4. **Persons marketing or distributing food products.** Persons who market or distribute food, food materials or dietary supplements or any person who engages in the explanation of the use of those products or the preparation of those products; and

[1987, c. 313, §9 (NEW) .]

5. **Persons providing weight control services.** Any person who provides weight control services, provided that:

A. The weight control program either recommends physician consultation generally or has in place procedures which require physician referral when medical conditions, such as heart disease, cancer, diabetes, hypoglycemia, morbid obesity and pregnancy exist; and [1987, c. 313, §9 (NEW).]

B. The program has been reviewed by, consultation is available from and no program change may be initiated without prior approval by:

(1) A licensed dietitian;

(2) A dietitian licensed in another state that has licensure requirements determined by the board to be equal to the requirements of this chapter; or

(3) A dietitian in another state without licensing who is registered by the Commission on Dietetic Registration of the American Dietetic Association or its successor or other organization approved by the board. [2007, c. 402, Pt. Y, §9 (AMD).]

[2007, c. 402, Pt. Y, §9 (AMD) .]

SECTION HISTORY
1987, c. 313, §9 (NEW). 1995, c. 402, §A36 (AMD). 2007, c. 402, Pt. Y, §9 (AMD).

Chapter 104-A: UNDERGROUND OIL STORAGE TANK INSTALLERS

§10001. DECLARATION OF PURPOSE

In order to safeguard the public health, safety and welfare, to protect the public from incompetent and unauthorized persons, to ensure the highest degree of professional conduct on the part of underground oil storage tank installers and inspectors and to ensure the availability of underground oil storage tank installations and inspections 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 underground oil storage tank installation and inspection services. [2001, c. 231, §4 (AMD).]

SECTION HISTORY
1985, c. 496, §A2 (NEW). 1987, c. 410, §2 (AMD). 1997, c. 364, §2 (AMD). 2001, c. 231, §4 (AMD).

§10002. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1985, c. 496, Pt. A, §2 (NEW).]

1. **Board.** "Board" means the Board of Underground Oil Storage Tank Installers established under this chapter.

[1985, c. 496, Pt. A, §2 (NEW) .]

1-A. **Class I liquid.** "Class I liquid" means any liquid having a flash point below 100° Fahrenheit.

[1989, c. 845, §4 (NEW) .]

2. **Commissioner.** "Commissioner" means the Commissioner of Environmental Protection.

[1985, c. 496, Pt. A, §2 (NEW) .]

3. **Department.** "Department" means the Department of Environmental Protection.

[1985, c. 496, Pt. A, §2 (NEW) .]

3-A. **Hazardous substance.**

[1997, c. 364, §3 (RP) .]

3-B. **Gasoline.** "Gasoline" means a volatile, highly flammable liquid with a flashpoint of less than 100° Fahrenheit obtained from the fractional distillation of petroleum.

[1989, c. 312, §1 (NEW) .]

4. **Oil.** "Oil" means oil, petroleum products and their by-products of any kind and in any form including, but not limited to, petroleum, fuel oil, sludge, oil refuse, oil mixed with other waste, crude oils and all other liquid hydrocarbons regardless of specific gravity.

[1985, c. 496, Pt. A, §2 (NEW) .]

5. **Public member.** "Public member" means that that person may not be a past or present member of the occupation or profession regulated by the board, may not have been professionally affiliated with that occupation or profession for a period of 5 years preceding appointment to the board and may not have had in the past a material or financial interest in either the provision of services provided by this occupation or profession or an activity directly related to this occupation or profession, including the representation of the board or profession for a fee at any time during the 5 years preceding appointment.

[1985, c. 496, Pt. A, §2 (NEW) .]

5-A. **Underground hazardous substance storage tank.**

[1997, c. 364, §3 (RP) .]

5-B. **Underground hazardous substance storage tank installer.**

[1997, c. 364, §3 (RP) .]

5-C. **Underground gasoline storage tank.** "Underground gasoline storage tank" means a tank or container, 10% or more of which is underground, together with associated piping and dispensing facilities and which is used, or intended to be used, for the storage or supply of gasoline. The term does not include tanks or containers that are situated upon or above the surface of a floor and in such a manner that they may be readily inspected.

[1989, c. 312, §1 (NEW) .]

5-D. **Underground gasoline storage tank remover.** "Underground gasoline storage tank remover" means a person certified under this chapter to remove underground gasoline storage tanks.

[1989, c. 312, §1 (NEW) .]

6. **Underground oil storage tank.** "Underground oil storage tank," for purposes of this chapter, means any tank or container, 10% or more of which is beneath the surface of the ground, together with associated piping and dispensing facilities and which is used, or intended to be used, for the storage or supply of oil as defined in subsection 4. The term "underground oil storage tank" does not include tanks or containers, associated piping or dispensing facilities that are located in an underground area if these tanks or containers, associated piping or dispensing facilities are situated upon or above the surface of a floor and in such a manner that they may be readily inspected.

[1985, c. 496, Pt. A, §2 (NEW) .]

6-A. **Underground oil storage tank inspector.** "Underground oil storage tank inspector" means a person certified under this chapter to inspect underground oil storage tanks.

[2001, c. 231, §5 (NEW) .]

7. **Underground oil storage tank installer.** "Underground oil storage tank installer" means a person certified under this chapter to install underground oil storage tanks and to remove underground oil storage tanks.

[1987, c. 491, §2 (AMD) .]

SECTION HISTORY
1985, c. 496, §A2 (NEW). 1987, c. 410, §3 (AMD). 1987, c. 491, §2 (AMD). 1989, c. 312, §1 (AMD). 1989, c. 845, §4 (AMD). 1997, c. 364, §3 (AMD). 2001, c. 231, §5 (AMD).

§10003. BOARD OF UNDERGROUND STORAGE TANK INSTALLERS; ESTABLISHMENT; COMPENSATION

1. **Establishment and membership.** There is established within the Department of Environmental Protection, the Board of Underground Storage Tank Installers. The board consists of 7 members appointed by the Governor as follows: one from the Department of Environmental Protection; one from the Maine Oil Dealer's Association; one underground oil storage tank installer; one from the Maine Chamber and Business Alliance or an underground oil storage tank inspector or a 2nd underground oil storage tank installer; one from the Maine Fire Chiefs Association; and 2 public members.

[2003, c. 551, §3 (AMD) .]

2. **Terms of appointment.** The Governor, within 60 days following the effective date of this chapter, shall appoint 3 board members for terms of one year, 3 for terms of 2 years and one for a term of 3 years. The Governor shall appoint by October 1, 1987, a board member from the Maine Chamber of Commerce and Industry for an initial term of one year. Appointments made thereafter are for 3-year terms, but no person except the representative from the Department of Environmental Protection may be appointed to serve more than 2 consecutive terms at any one time. Terms begin on the first day of the calendar year and end on the last day of the calendar year or until successors are appointed, except for the first appointed members who shall serve through the last calendar days of the year in which they are appointed, before commencing the terms prescribed by this section.

Any member of the board may be removed from office for cause by the Governor. A member may not serve more than 2 full successive terms provided that, for this purpose only, a period actually served that exceeds 1/2 of the 3-year term is deemed a full term.

[1991, c. 499, §7 (AMD) .]

3. **Meetings.** The board shall meet during the first month of each calendar year to select a chairman and for other purposes. At least one additional meeting shall be held before the end of each calendar year. Other meetings may be convened at the call of the chairman or the written request of any 3 board members. A majority of the members of the board shall constitute a quorum for all purposes.

[1987, c. 410, §4 (AMD) .]

4. **Compensation.** Members of the board shall receive no compensation for their services, but are entitled to expenses on the same basis as provided for state employees.

[1987, c. 410, §4 (AMD) .]

SECTION HISTORY
1985, c. 496, §A2 (NEW). 1987, c. 410, §4 (AMD). 1989, c. 845, §5 (AMD). 1991, c. 499, §7 (AMD). 1997, c. 364, §4 (AMD). 2001, c. 231, §6 (AMD). 2001, c. 626, §9 (AMD). 2003, c. 551, §3 (AMD).

§10004. BOARD OF UNDERGROUND OIL STORAGE TANK INSTALLERS; POWERS AND DUTIES

1. **Powers.** The board shall administer and enforce this chapter and evaluate the qualifications of applicants for certification. The board may issue subpoenas, examine witnesses, administer oaths and may investigate or cause to be investigated any complaints made to it or any cases of noncompliance with or violation of this chapter.

[1985, c. 496, Pt. A, §2 (NEW) .]

2. **Rules.** The board may adopt, in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, rules relating to professional conduct to carry out the policy of this chapter, including, but not limited to, rules relating to professional regulation and to the establishment of ethical standards of practice for persons certified to practice underground oil storage tank installation, inspection and removal and underground gasoline storage tank removal.

[2001, c. 231, §7 (AMD) .]

3. **Hearings.** Hearings may be conducted by the board to assist with investigations, to determine whether grounds exist for suspension, revocation or denial of certification, or as otherwise deemed necessary to the fulfillment of its responsibilities under this chapter. Hearings shall be conducted in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV, to the extent applicable.

[1985, c. 496, Pt. A, §2 (NEW) .]

4. **Records.** The board shall keep such records and minutes as are necessary to the ordinary dispatch of its functions.

[1985, c. 496, Pt. A, §2 (NEW) .]

5. **Contracts.** The board may enter into contracts to carry out its responsibilities under this chapter.

[1985, c. 496, Pt. A, §2 (NEW) .]

6. **Reports.** No later than August 1st of each year, the board shall submit to the commissioner, for the preceding fiscal year ending June 30th, its annual report of its operations and financial position, together with such comments and recommendations as the commissioner deems essential.

[1985, c. 496, Pt. A, §2 (NEW) .]

SECTION HISTORY
1985, c. 496, §A2 (NEW). 1987, c. 410, §5 (AMD). 1989, c. 312, §2 (AMD). 1997, c. 364, §5 (AMD). 2001, c. 231, §7 (AMD).

§10005. BOARD OF UNDERGROUND STORAGE TANK INSTALLERS; ADMINISTRATIVE PROVISIONS

1. **Officers.** The board shall appoint a secretary and may appoint other officers as it determines necessary.

[1987, c. 410, §6 (AMD) .]

2. **Employees.** With the advice of the board, the commissioner may appoint, subject to the Civil Service Law, such employees as may be necessary to carry out this chapter. Any person so employed shall be located in the department and under the administrative and supervisory direction of the commissioner.

[1985, c. 785, Pt. B, §147 (AMD) .]

3. **Budget.** The board shall submit to the commissioner its budgetary requirements in the same manner as is provided in Title 5, section 1665.

[1985, c. 496, Pt. A, §2 (NEW) .]

SECTION HISTORY

1985, c. 496, §A2 (NEW). 1985, c. 785, §B147 (AMD). 1987, c. 410, §6 (AMD).

§10006. CERTIFICATION

1. **Certification required.** A person may not practice, or profess to practice, as an underground oil storage tank installer or underground oil storage tank inspector in this State or use the words "underground oil storage tank installer," "underground oil storage tank inspector" or other words or letters to indicate that the person using the words or letters is a certified underground oil storage tank installer or underground oil storage tank inspector unless that person is certified in accordance with this chapter.

[2007, c. 292, §1 (AMD) .]

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

[1985, c. 496, Pt. A, §2 (NEW) .]

3. **Proper underground oil storage tank installer certification class required.** A person may not install or advertise to install underground oil storage tanks or remove, pursuant to Title 38, section 566-A, subsection 5, underground tanks used for the storage of Class 1 liquids unless the person has been certified in accordance with this subsection.

A. [1991, c. 817, §1 (RP).]

B. An underground oil storage tank installer may install or remove any type of underground oil storage tank, with the exception of field-constructed underground oil storage tanks and impressed-current cathodically protected tanks. [2007, c. 292, §1 (AMD).]

C. [2007, c. 292, §1 (RP).]

D. [1991, c. 817, §3 (RP).]

E. [2007, c. 292, §1 (RP).]

[2007, c. 292, §1 (AMD) .]

4. **Proper underground gasoline storage tank remover certification class required.**

[2007, c. 292, §1 (RP) .]

SECTION HISTORY
1985, c. 496, §A2 (NEW). 1987, c. 410, §7 (AMD). 1989, c. 312, §§3,4 (AMD). 1989, c. 845, §6 (AMD). 1991, c. 817, §§1-4 (AMD). 1997, c. 364, §6 (AMD). 2001, c. 231, §8 (AMD). 2007, c. 292, §1 (AMD).

§10007. PERSONS AND PRACTICES EXEMPT

Nothing in this chapter may be construed as preventing or restricting the practice, services or activities of: [1985, c. 496, Pt. A, §2 (NEW).]

1. **Certified persons.** Any person certified in this State by any other law from engaging in the profession or occupation for which he is certified.

[1985, c. 496, Pt. A, §2 (NEW) .]

SECTION HISTORY
1985, c. 496, §A2 (NEW).

§10008. RECIPROCITY

A person who is a resident of the State and has been certified in another state as an underground oil storage tank installer or underground oil storage tank inspector may, upon payment of a fee as established under section 10012, obtain a certification as an underground oil storage tank installer or underground oil storage tank inspector, if that person submits satisfactory evidence of certification as an underground oil storage tank installer or underground oil storage tank inspector in another state under qualifications equivalent to those specified in this chapter. [2001, c. 231, §9 (AMD).]

SECTION HISTORY
1985, c. 496, §A2 (NEW). 1987, c. 410, §8 (AMD). 1997, c. 364, §7 (AMD). 2001, c. 231, §9 (AMD).

§10009. CERTIFICATION REQUIREMENTS FOR PERSONS WORKING AS UNDERGROUND HAZARDOUS SUBSTANCE STORAGE TANK INSTALLERS *(REPEALED)*

SECTION HISTORY
1985, c. 496, §A2 (NEW). 1985, c. 763, §A95 (AMD). 1987, c. 410, §9 (RPR). 1989, c. 312, §5 (RP).

§10010. REQUIREMENTS FOR CERTIFICATION

An applicant for certification as an underground oil storage tank installer or an underground oil storage tank inspector must file a written application provided by the board, showing to the satisfaction of the board that that person meets the following requirements. [2007, c. 292, §2 (AMD).]

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

[1985, c. 496, Pt. A, §2 (NEW) .]

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

[1985, c. 496, Pt. A, §2 (NEW) .]

3. **Education and examination for certification of new underground oil storage tank installers.** An applicant must meet the following requirements:

A. Passage of an initial written or oral examination based on laws outlined in and any rules promulgated under Title 38, chapter 3, subchapter II-B, by the Board of Environmental Protection concerning the installation and removal of underground oil storage tanks, any regulations promulgated by the federal Environmental Protection Agency regarding the installation and removal of underground oil storage tanks and any technical concepts necessary to understand and implement those laws, rules or regulations; [1989, c. 312, §7 (RPR); 1989, c. 845, §7 (AMD).]

B. Successful completion of an apprenticeship in accordance with this section and under the direct supervision of an underground oil storage tank installer; and [2007, c. 292, §3 (AMD).]

C. Passage of a final written or oral examination that is based on the laws outlined in and rules adopted under Title 38, chapter 3, subchapter 2-B, by the Board of Environmental Protection concerning the installation and removal of underground oil storage tanks. [2007, c. 292, §4 (AMD).]

[2007, c. 292, §§3, 4 (AMD) .]

3-A. **Apprenticeship requirements for new underground oil storage tank installers.** An applicant for certification as an underground oil storage tank installer must meet the following apprenticeship requirements before being certified.

A. [1991, c. 817, §5 (RP).]

B. To be eligible to take the final examination for a certification, the applicant must provide documentation of field experience, under the apprenticeship of an underground oil storage tank installer, sufficient to demonstrate expertise in the installation and removal of tanks and piping. The board shall specify, in the rules adopted pursuant to paragraph D, the nature and extent of field experience required to demonstrate this expertise. [2007, c. 292, §5 (AMD).]

C. [2007, c. 292, §6 (RP).]

D. The board shall adopt rules to administer this section and to provide a variance to the apprenticeship requirements under paragraph B if the applicant can satisfactorily demonstrate training and experience comparable to completion of an apprenticeship. [2007, c. 292, §7 (AMD).]

[2007, c. 292, §§5-7 (AMD) .]

4. **Education and examination for certification of new underground hazardous substance storage tank installers.**

[1997, c. 364, §9 (RP) .]

5. **Education and examination for certification of underground gasoline storage tank removers.**

[2007, c. 292, §8 (RP) .]

6. **Education and examination for certification of underground oil storage tank inspectors.** An applicant for certification as an underground oil storage tank inspector must:

A. Pass a written or oral examination prepared by the board or such other exam as the board may deem equivalent that demonstrates the applicant's understanding of the following:

(1) The underground oil storage tank requirements of Title 38, chapter 3, subchapter II-B;

(2) Any rules regarding underground oil storage tanks adopted pursuant to Title 38, chapter 3, subchapter II-B by the Board of Environmental Protection;

(3) Any regulations regarding underground oil storage promulgated by the federal Environmental Protection Agency; and

(4) Any technical concepts necessary to understand and implement state and federal laws, rules and regulations regarding underground oil storage tanks; [2001, c. 231, §11 (NEW).]

B. Demonstrate valid certification or licensing by manufacturers of ancillary equipment that the applicant intends to inspect if the manufacturers require any such certification to maintain equipment warranties; and [2001, c. 231, §11 (NEW).]

C. If the applicant intends to inspect cathodic protection systems, demonstrate valid, nationally recognized certification or licensing that meets the requirements for a "cathodic protection tester" as specified in 40 Code of Federal Regulations, Section 280.12. [2001, c. 231, §11 (NEW).]

[2001, c. 231, §11 (NEW) .]

SECTION HISTORY
1985, c. 496, §A2 (NEW). 1987, c. 410, §§10-12 (AMD). 1989, c. 312, §§6-10 (AMD). 1989, c. 845, §§7-10 (AMD). 1991, c. 817, §5 (AMD). 1997, c. 364, §§8-10 (AMD). 2001, c. 231, §§10,11 (AMD). 2007, c. 292, §§2 - 8 (AMD).

§10010-A. CERTIFICATION REQUIREMENTS REGARDING ON-SITE REMOVAL OF UNDERGROUND OIL STORAGE TANK USED FOR STORAGE OF MOTOR FUEL UNDER SUPERVISION OF DESIGNATED REPRESENTATIVE OF DEPARTMENT OF ENVIRONMENTAL PROTECTION

(REPEALED)

SECTION HISTORY
1985, c. 763, §A96 (NEW). 1987, c. 410, §13 (AMD). 1989, c. 312, §11 (AMD). 1989, c. 845, §11 (AMD). 1997, c. 364, §11 (AMD). 2011, c. 206, §3 (RP).

§10010-B. CERTIFICATION OF EMPLOYEES OF THE DEPARTMENT

Employees of the Department of Environmental Protection may be certified for the purposes of carrying out their assigned duties and responsibilities but remain subject to the conditions set forth in Title 5, section 18. [1985, c. 763, Pt. A, §96 (NEW).]

SECTION HISTORY
1985, c. 763, §A96 (NEW).

§10010-C. EXAMINATION OF FIRE-FIGHTING PERSONNEL

(REPEALED)

SECTION HISTORY
1991, c. 817, §6 (NEW). 2007, c. 292, §9 (RP).

§10011. EXAMINATION FOR CERTIFICATION

1. **Requirements; fees.** Only a person satisfying the requirements of section 10010, subsections 1 and 2 may apply for examination in the manner prescribed by the board. The application must be accompanied by the nonrefundable fee prescribed by section 10012. A person who fails either part of the applicable examination specified in section 10010, subsection 3 or 6 may apply for reexamination upon payment of the prescribed fee.

[2007, c. 292, §10 (AMD) .]

2. **Content.** The written examination must test the applicant's knowledge of the skills and knowledge relating to storage tank installation, inspection or removal and such other subjects as the board requires to determine the applicant's fitness to practice. The board shall approve examinations required by this chapter for underground oil storage tank installers, underground gasoline storage tank removers and underground oil storage tank inspectors and establish standards for an acceptable performance.

[2001, c. 231, §13 (AMD) .]

3. **Time and place.** Applicants for certification shall be examined at a time and place and under such supervision as the board requires. Examinations shall be given at least twice each year at such places as the board determines.

The board shall give reasonable public notice of these examinations in accordance with its rules.

[1985, c. 496, Pt. A, §2 (NEW) .]

4. **Scores; review.** Applicants may obtain their examination scores and may review their papers in accordance with rules as the board may establish.

[1985, c. 496, Pt. A, §2 (NEW) .]

SECTION HISTORY
1985, c. 496, §A2 (NEW). 1987, c. 410, §14 (AMD). 1989, c. 312, §12 (AMD). 1991, c. 817, §7 (AMD). 1997, c. 364, §§12,13 (AMD). 2001, c. 231, §§12,13 (AMD). 2007, c. 292, §10 (AMD).

§10012. FEES

1. **Amount.** Fees may be established by the board in amounts which are reasonable and necessary for their respective purposes.

[1985, c. 496, Pt. A, §2 (NEW) .]

2. **Disposal of fees and civil penalties.** All fees received by the board under subsection 1 and civil penalties imposed under sections 10015 or 10016 must be paid to the Treasurer of State to be deposited into the Ground Water Oil Clean-up Fund and used for the purpose of carrying out all applicable provisions of this chapter. Any balance of fees and civil penalties does not lapse but must be carried forward as a continuing account to be expended for the same purposes in the following fiscal years.

[2007, c. 497, §1 (AMD) .]

SECTION HISTORY
1985, c. 496, §A2 (NEW). 1985, c. 626, §1 (AMD). 1987, c. 410, §15 (AMD). 1989, c. 312, §13 (AMD). 1991, c. 499, §8 (AMD). 1997, c. 364, §14 (AMD). 2001, c. 231, §14 (AMD). 2007, c. 497, §1 (AMD).

§10013. ISSUANCE OF CERTIFICATION

The board shall issue a certificate to any person who meets the requirements of this chapter upon payment of the prescribed certification fee. [1985, c. 496, Pt. A, §2 (NEW).]

SECTION HISTORY
1985, c. 496, §A2 (NEW).

§10014. RENEWAL OF CERTIFICATION

1. **Biennial renewal.** Any certificate issued under this chapter is subject to biennial renewal and shall expire, unless renewed in the manner prescribed by the rules of the board, upon the payment of a renewal fee. Certificates may be renewed up to 30 days after the date of expiration upon payment of a late fee of $10 in addition to the renewal fee. Any person who submits an application for renewal more than 30 days after the certification renewal date 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 application is made within 2 years from the date of that expiration.

[1985, c. 496, Pt. A, §2 (NEW) .]

2. **Inactive status.** Upon request, the board shall grant inactive status to certified persons who do not practice or present themselves as underground oil tank installers, underground gasoline storage tank removers or underground oil storage tank inspectors and maintain any continuing competency requirements established by the board.

[2001, c. 231, §15 (AMD) .]

3. **Continuing competency.** Each certification renewal shall be accompanied with evidence of continuing competencies as determined by the board.

[1985, c. 496, Pt. A, §2 (NEW) .]

SECTION HISTORY
1985, c. 496, §A2 (NEW). 1987, c. 410, §16 (AMD). 1989, c. 312, §14 (AMD). 1997, c. 364, §15 (AMD). 2001, c. 231, §15 (AMD).

§10015. INVESTIGATION; REFUSAL OF LICENSE OR RENEWAL; DISCIPLINARY ACTION

1. **Complaints; investigations.** The board shall investigate or cause to be investigated a complaint made on its own motion or on written complaint filed with the board and all cases of noncompliance with or violation of this chapter or of any rules adopted by the board.

[1985, c. 496, Pt. A, §2 (NEW) .]

2. **Grounds for disciplinary action.** The following are grounds for an action to modify, reclassify, suspend, revoke or refuse to issue or renew a certificate or impose a civil penalty:

A. The practice of any fraud or deceit in obtaining a certificate under this chapter or in connection with services rendered within the scope of the certificate issued; [1985, c. 496, Pt. A, §2 (NEW).]

B. Unprofessional conduct, including any gross negligence, incompetency or misconduct in the certified person's performance of the work of underground oil storage tank installation or removal, underground gasoline storage tank removal or underground oil storage tank inspection or violation of any standard of professional behavior established by the board; [2001, c. 231, §16 (AMD).]

C. Subject to the limitation of Title 5, chapter 341, conviction of a crime that involves dishonesty or false statement or relates directly to the practice for which the certified person is certified or conviction of any crime for which imprisonment for one year or more may be imposed; or [1989, c. 845, §12 (AMD).]

D. Any violation of this chapter or any rule adopted by the board. [1985, c. 496, Pt. A, §2 (NEW).]

[2007, c. 292, §11 (AMD) .]

2-A. **Disciplinary action authority.** For each violation of applicable laws, rules or conditions of certification, the board may take one or more of the following actions:

A. Issue warnings, censures or reprimands to a certified person or applicant. Each warning, censure and reprimand issued must be based on violations of different applicable laws, rules, or conditions of certification or on separate instances of actionable conduct or activity; [1989, c. 845, §13 (NEW).]

B. Suspend a certificate for up to 90 days for each violation or 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 certified person's record; [1989, c. 845, §13 (NEW).]

C. Impose civil penalties of up to $1,500 for each violation or each instance of actionable conduct or activity; [1989, c. 845, §13 (NEW).]

D. Impose conditions of probation upon an applicant or certified person. Probation may run for such time period as the board determines appropriate. Probation may include such conditions as: additional continuing education; medical, psychiatric or mental health consultations or evaluations; mandatory professional or occupational supervision of the applicant or certified person; and such other conditions as the board determines appropriate. Cost incurred in the performance of terms of probation is borne by the applicant or certified person. Failure to comply with the conditions of probation is grounds for disciplinary action against a certificate holder; [1989, c. 845, §13 (NEW).]

E. Suspend or revoke a certificate pursuant to Title 5, section 10004; and [1989, c. 845, §13 (NEW).]

F. Refuse to issue or renew a certificate. [1989, c. 845, §13 (NEW).]

[1989, c. 845, §13 (NEW) .]

2-B. **Consent agreements.** The board may execute a consent agreement which resolves a complaint or investigation without further proceedings. Consent agreements may be entered into only with the consent of the applicant, the board and the Department of the Attorney General. Any remedy, penalty or fine that is otherwise available by law, even if in the District Court, may be achieved by consent agreement, including long-term suspension and permanent revocation of a certificate. 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.

[1989, c. 845, §13 (NEW); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

2-C. **Surrender of certificate.** The board may require surrender of certificates. In order for a certified person's surrender of a certificate to be effective, a surrender must first be accepted by vote of the board. The board may refuse to accept surrender of the certificate if the certified person 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.

[1989, c. 845, §13 (NEW) .]

3. **Criminal penalty.** Any person who violates a provision of this chapter or any lawful order or rule adopted by the board is guilty of a Class E crime.

[1985, c. 496, Pt. A, §2 (NEW) .]

4. **Injunction.** 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 District Court or whether criminal proceedings have been or may be instituted.

[1985, c. 496, Pt. A, §2 (NEW); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

5. **Reinstatement.** An application for reinstatement may be made to the board one year from the date of revocation of a certificate. The board may accept or reject the application and hold a hearing to consider the reinstatement.

[1985, c. 496, Pt. A, §2 (NEW) .]

6. **Limitation of actions.** An action by the board against a certified person for any violation of this chapter relating to a tank or equipment installed on or after September 16, 1991 must be commenced within 3 years after the violation is discovered, but the action may not be commenced more than 15 years after installation of the storage tank or equipment that is the subject of the violation.

[1999, c. 714, §1 (NEW) .]

The jurisdiction to suspend or revoke certificates conferred by this section is concurrent with that of the Superior Court. Civil penalties accrue to the Ground Water Oil Clean-up Fund. Any nonconsensual action under subsection 2-A taken under authority of this section may be imposed only after a hearing conforming to the requirements of Title 5, chapter 375, subchapter 4, and is subject to judicial review exclusively in the Superior Court in accordance with Title 5, chapter 375, subchapter 7, notwithstanding any other provision of law. [2005, c. 330, §2 (AMD).]

SECTION HISTORY
1985, c. 496, §A2 (NEW). 1987, c. 410, §17 (AMD). 1989, c. 312, §15 (AMD). 1989, c. 845, §§12-14 (AMD). 1997, c. 364, §16 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 1999, c. 714, §1 (AMD). 2001, c. 231, §16 (AMD). 2005, c. 330, §2 (AMD). 2007, c. 292, §11 (AMD).

§10016. UNCERTIFIED PRACTICE

1. **Complaints.** The board may receive or initiate complaints of uncertified practice as an underground oil storage tank installer or inspector.

[2007, c. 497, §2 (NEW) .]

2. **Investigation.** Complaints of uncertified practice under subsection 1 may be investigated by the board, the department or the Attorney General. If sufficient evidence of uncertified practice is uncovered, the evidence must be compiled and presented to the Attorney General or the local district attorney's office for prosecution.

[2007, c. 497, §2 (NEW) .]

3. **Criminal penalties.** Notwithstanding any other provision of law:

A. A person who practices or represents to the public that the person is authorized to practice as an underground oil storage tank installer or inspector and intentionally, knowingly or recklessly fails to obtain certification as required by this chapter or intentionally, knowingly or recklessly practices or represents to the public that the person is authorized to practice after the certification required by this chapter has expired or been suspended or revoked commits a Class E crime; and [2007, c. 497, §2 (NEW).]

B. A person who violates paragraph A when the person has a prior conviction under this subsection commits a Class D crime. Title 17-A, section 9-A governs the use of prior convictions when determining a sentence, except that, for purposes of this paragraph, the date of the prior conviction must precede the commission of the offense being enhanced by no more than 3 years. [2007, c. 497, §2 (NEW).]

[2007, c. 497, §2 (NEW) .]

4. **Civil violations.** A person who practices or represents to the public that the person is authorized to practice as an underground oil storage tank installer or inspector without first obtaining certification as required by this chapter or after the certification has expired or has been suspended or revoked commits a civil violation for which a fine of not less than $100 and not more than $2,000 for each violation may be adjudged. An action under this subsection may be brought in District Court or Superior Court.

[2007, c. 497, §2 (NEW) .]

5. **Injunctions.** The Attorney General may bring an action in District Court or Superior Court to enjoin a person from violating subsection 4 and to restore to a person who has suffered any ascertainable loss by reason of that violation any money or personal or real property that may have been acquired by means of that violation and to compel the return of compensation received for engaging in that unlawful conduct.

A person who violates the terms of an injunction issued under this subsection shall pay to the State a fine of not more than $10,000 for each violation. In an action under this subsection, when a permanent injunction has been issued, the court may order the person against whom the permanent injunction is issued to pay to the Ground Water Oil Clean-up Fund under Title 38, chapter 3, subchapter 2-B the costs of the investigation of that person by the Attorney General and the costs of suit, including attorney's fees. In an action by the Attorney General brought against a person for violating the terms of an injunction issued under this subsection, the court may make the necessary orders or judgments to restore to a person who has suffered any ascertainable loss any money or personal or real property or to compel the return of compensation received by reason of such conduct found to be in violation of an injunction.

[2007, c. 497, §2 (NEW) .]

SECTION HISTORY
2007, c. 497, §2 (NEW).

Chapter 105: REVISED MAINE SECURITIES ACT

Subchapter 1: OFFICE OF SECURITIES AND SECURITIES ADMINISTRATOR HEADING: PL 2001, C. 182, §9 (RPR); 2005, C. 65, PT. A, §1 (RP)

§10101. SHORT TITLE

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10102. OFFICE OF SECURITIES

(REPEALED)

SECTION HISTORY
2001, c. 182, §10 (NEW). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10103. ADMINISTRATOR AND OTHER PERSONNEL

(REPEALED)

SECTION HISTORY
2001, c. 182, §10 (NEW). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

Subchapter 2: FRAUDULENT AND OTHER PROHIBITED PRACTICES HEADING: PL 2005, C. 65, PT. A, §1 (RP)

§10201. OFFERS, SALES AND PURCHASES

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10202. MARKET MANIPULATION

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10203. PROHIBITED ACTIONS BY INVESTMENT ADVISERS

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10204. MISLEADING FILINGS

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 1989, c. 542, §6 (AMD). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10205. UNLAWFUL REPRESENTATIONS CONCERNING LICENSING, REGISTRATION OR EXEMPTION

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 1989, c. 542, §7 (AMD). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

Subchapter 3: LICENSING OF BROKER-DEALERS, SALES REPRESENTATIVES AND INVESTMENT ADVISORS HEADING: PL 2005, C. 65, PT. A, §1 (RP)

§10301. BROKER-DEALER AND SALES REPRESENTATIVE LICENSING REQUIREMENT

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 1989, c. 542, §8 (AMD). 1997, c. 168, §1 (AMD). 1999, c. 37, §§1,2 (AMD). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10302. EXEMPT BROKER-DEALERS AND SALES REPRESENTATIVES

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 1985, c. 617, §§1,2 (AMD). 1989, c. 542, §§9,10 (AMD). 1991, c. 82, §1 (AMD). 1997, c. 168, §§2-5 (AMD). 1999, c. 37, §3 (AMD). 1999, c. 279, §1 (AMD). 2003, c. 201, §§1-3 (AMD). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10303. INVESTMENT ADVISER AND INVESTMENT ADVISER REPRESENTATIVE LICENSING REQUIREMENT

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 1989, c. 542, §11 (AMD). 1991, c. 82, §2 (AMD). 1997, c. 168, §§6,7 (AMD). 2001, c. 183, §A1 (AMD). 2001, c. 183, §A14 (AFF). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10304. EXEMPT INVESTMENT ADVISERS

(REPEALED)

SECTION HISTORY

1985, c. 400, §2 (NEW). 1989, c. 542, §12 (AMD). 1997, c. 168, §§8-10 (AMD). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10305. APPLICATION

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 1985, c. 617, §3 (AMD). 1989, c. 542, §13 (AMD). 2001, c. 183, §A2 (AMD). 2001, c. 183, §A14 (AFF). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10305-A. NOTICE FILING

(REPEALED)

SECTION HISTORY
1997, c. 168, §11 (NEW). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10306. FEES

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 1989, c. 542, §§14-16 (AMD). 1991, c. 528, §§M1,2 (AMD). 1991, c. 528, §§M5,RRR (AFF). 1991, c. 591, §§M1,2 (AMD). 1991, c. 591, §M5 (AFF). 1993, c. 410, §§K2-4 (AMD). 1999, c. 37, §4 (AMD). 2001, c. 183, §§A3-8 (AMD). 2001, c. 183, §A14 (AFF). 2003, c. 201, §§4-13 (AMD). 2005, c. 12, §§KKKK1-5 (AMD). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10307. EXAMINATIONS

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 1985, c. 617, §4 (AMD). 1989, c. 542, §17 (AMD). 1991, c. 82, §§3-5 (AMD). 1997, c. 168, §§12-14 (AMD). 2001, c. 183, §§A9,10 (AMD). 2001, c. 183, §A14 (AFF). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10308. LICENSING

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 1989, c. 542, §§18-20 (AMD). 1991, c. 82, §6 (AMD). 2003, c. 201, §14 (AMD). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10309. ANNUAL REPORT AND FEE

(REPEALED)

SECTION HISTORY

1985, c. 400, §2 (NEW). 1989, c. 542, §21 (AMD). 1997, c. 168, §15 (AMD). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10310. POST-LICENSING REQUIREMENTS

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 1989, c. 542, §22 (AMD). 1997, c. 168, §§16,17 (AMD). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10311. SUCCESSOR FIRMS

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 1989, c. 542, §23 (AMD). 1999, c. 37, §5 (AMD). 2003, c. 201, §15 (AMD). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10312. INSPECTION POWER

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 1989, c. 542, §24 (AMD). 1997, c. 168, §18 (AMD). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10313. GROUNDS FOR DENIAL, SUSPENSION, REVOCATION, CANCELLATION AND WITHDRAWAL

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 1985, c. 617, §5 (AMD). 1989, c. 542, §§25,26 (AMD). 1991, c. 82, §7 (AMD). 1997, c. 660, §C1 (AMD). 1999, c. 37, §§6-8 (AMD). 2001, c. 262, §§D1-3 (AMD). 2003, c. 201, §16 (AMD). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10314. CUSTODY OF CLIENTS' SECURITIES AND FUNDS

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 1989, c. 542, §27 (AMD). 1997, c. 168, §§19,20 (AMD). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

Subchapter 4: REGISTRATION OF SECURITIES
HEADING: PL 2005, C. 65, PT. A, §1 (RP)

§10401. REGISTRATION REQUIREMENT

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 1997, c. 168, §21 (AMD). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10402. REGISTRATION BY NOTIFICATION

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 1989, c. 542, §28 (AMD). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10403. REGISTRATION BY COORDINATION

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 1985, c. 617, §6 (AMD). 1989, c. 542, §§29-31 (AMD). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10404. REGISTRATION BY QUALIFICATION

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 1987, c. 592, (AMD). 1989, c. 542, §§32,33 (AMD). 1999, c. 37, §9 (AMD). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10405. PROVISIONS APPLICABLE TO REGISTRATION GENERALLY

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 1989, c. 542, §34 (AMD). 1991, c. 528, §M3 (AMD). 1991, c. 528, §§M5,RRR (AFF). 1991, c. 591, §M3 (AMD). 1991, c. 591, §M5 (AFF). 1993, c. 410, §K5 (AMD). 2003, c. 201, §17 (AMD). 2003, c. 673, §RRR1 (AMD). 2003, c. 673, §RRR3 (AFF). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10406. DENIAL, SUSPENSION AND REVOCATION OF REGISTRATION

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 1989, c. 542, §35 (AMD). 2003, c. 201, §18 (AMD). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

Subchapter 5: GENERAL PROVISIONS
HEADING: PL 2005, C. 65, PT. A, §1 (RP)

§10501. DEFINITIONS

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 1989, c. 542, §§36-40 (AMD). 1997, c. 168, §§22,23 (AMD). 1999, c. 37, §§10-12 (AMD). 1999, c. 279, §§2-4 (AMD). 2001, c. 61, §§1,2 (AMD). 2001, c. 183, §A11 (AMD). 2001, c. 183, §A14 (AFF). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10502. EXEMPTIONS

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 1985, c. 617, §§7-9 (AMD). 1989, c. 542, §§41-44 (AMD). 1991, c. 82, §8 (AMD). 1991, c. 528, §M4 (AMD). 1991, c. 528, §§M5,RRR (AFF). 1991, c. 591, §M4 (AMD). 1991, c. 591, §M5 (AFF). 1993, c. 257, §10 (AMD). 1997, c. 168, §§24-26 (AMD). 1997, c. 660, §C2 (AMD). 1999, c. 37, §§13,14 (AMD). 1999, c. 279, §§5-8 (AMD). 2001, c. 183, §§B1-4 (AMD). 2003, c. 201, §19 (AMD). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10503. FILING OF SALES AND ADVERTISING LITERATURE

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 1985, c. 617, §10 (AMD). 1989, c. 542, §45 (AMD). 1997, c. 168, §27 (RP).

§10504. FILING OF SALES AND ADVERTISING LITERATURE

(REPEALED)

SECTION HISTORY
1997, c. 168, §28 (NEW). 1999, c. 279, §9 (AMD). 2003, c. 201, §20 (AMD). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10505. FEDERAL COVERED SECURITIES

(REPEALED)

SECTION HISTORY
1997, c. 168, §28 (NEW). 2003, c. 201, §§21,22 (AMD). 2003, c. 673, §RRR2 (AMD). 2003, c. 673, §RRR3 (AFF). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

Subchapter 6: ENFORCEMENT AND CIVIL LIABILITY HEADING: PL 2005, C. 65, PT. A, §1 (RP)

§10601. INVESTIGATIONS

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 1989, c. 542, §46 (AMD). 1999, c. 37, §15 (AMD). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10602. ENFORCEMENT OF ACT

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 1989, c. 542, §§47,48 (AMD). 1991, c. 82, §9 (AMD). 1991, c. 509, §§35-37 (AMD). 1997, c. 168, §29 (AMD). 1999, c. 37, §§16,17 (AMD). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10603. POWER OF COURT TO GRANT RELIEF

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 1989, c. 542, §49 (AMD). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10604. CRIMINAL PENALTIES

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 1989, c. 542, §§50,51 (AMD). 1991, c. 548, §D8 (AMD). 1997, c. 660, §§C3-5 (AMD). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10605. CIVIL LIABILITY

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 1989, c. 542, §52 (AMD). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10606. CIVIL STATUTE OF LIMITATIONS

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10607. RESCISSION AND SETTLEMENT OFFERS

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 1989, c. 542, §53 (AMD). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10607-A. RIGHT TO RESCISSION APPLICABLE TO SALES OF VIATICAL SETTLEMENT CONTRACTS

(REPEALED)

SECTION HISTORY
1999, c. 279, §10 (NEW). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10608. MISCELLANEOUS PROVISIONS

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 1989, c. 542, §54 (AMD). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

Subchapter 7: ADMINISTRATION HEADING: PL 2005, C. 65, PT. A, §1 (RP)

§10701. ADMINISTRATION OF ACT

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 1985, c. 617, §11 (AMD). 1989, c. 542, §§55,56 (AMD). 1997, c. 168, §30 (AMD). 1999, c. 184, §21 (AMD). 2003, c. 201, §§23,24 (AMD). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10702. COOPERATION WITH OTHER AGENCIES

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 1989, c. 542, §57 (AMD). 1999, c. 37, §18 (AMD). 1999, c. 184, §§22,23 (AMD). 2001, c. 182, §11 (AMD). 2003, c. 201, §25 (AMD). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10703. GENERAL AUTHORITY TO ADOPT RULES, FORMS AND ORDERS

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 1989, c. 542, §58 (AMD). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10704. CONSENT TO SERVICE OF PROCESS

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 1989, c. 542, §59 (AMD). 1997, c. 168, §§31-35 (AMD). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10705. ADVISORY RULINGS; DECLARATORY RULINGS

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 1989, c. 542, §60 (AMD). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10706. ADMINISTRATIVE FILES

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 1989, c. 542, §61 (AMD). 1997, c. 168, §§36,37 (AMD). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10707. SCOPE OF THE ACT

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 1997, c. 168, §38 (AMD). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10708. PROCEDURE FOR ENTRY OF AN ORDER

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 1985, c. 617, §12 (AMD). 1989, c. 542, §§62-65 (AMD). 2001, c. 182, §12 (AMD). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10709. JUDICIAL REVIEW OF ORDERS

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 1989, c. 542, §66 (AMD). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10710. REPEAL AND SAVING PROVISIONS

(REPEALED)

SECTION HISTORY
1985, c. 400, §2 (NEW). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10711. ACTS OF SUPERINTENDENT OF FINANCIAL INSTITUTIONS

(REPEALED)

SECTION HISTORY
1989, c. 542, §67 (NEW). 2001, c. 44, §11 (AMD). 2001, c. 44, §14 (AFF). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10712. AUTHORITY TO CHANGE FEES

(REPEALED)

SECTION HISTORY
1993, c. 410, §K6 (NEW). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

§10713. OPERATING FUND

(REPEALED)

SECTION HISTORY
1993, c. 410, §K6 (NEW). 2001, c. 183, §A12 (AMD). 2001, c. 183, §A14 (AFF). 2005, c. 65, §A3 (AFF). 2005, c. 65, §A1 (RP). 2005, c. 397, §C26 (AFF).

Chapter 109-A: MAINE FAIR DEBT COLLECTION PRACTICES ACT

Subchapter 1: GENERAL PROVISIONS

§11001. SHORT TITLE

This chapter shall be known and may be cited as the "Maine Fair Debt Collection Practices Act." [1985, c. 702, §2 (NEW).]

SECTION HISTORY
1985, c. 702, §2 (NEW).

§11002. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1985, c. 702, §2 (NEW).]

1. **Communication.** "Communication" means the conveyance or receipt of information regarding or facilitating the collection of a debt, directly or indirectly, to or from any person through any medium.

[1985, c. 702, §2 (NEW) .]

2. **Conducting business in this State.** "Conducting business in this State" means the collection or attempted collection of a debt due another by a debt collector located in this State; the face-to-face solicitation of creditors in this State as clients and the collection or attempted collection of their debts by a debt collector, wherever located; or the collection or attempted collection of debts incurred between a consumer in this State and creditor in this State by a debt collector, wherever located.

[1995, c. 397, §101 (AMD) .]

3. **Consumer.** "Consumer" means any natural person obligated or allegedly obligated to pay any debt.

[1985, c. 702, §2 (NEW) .]

4. **Creditor.** "Creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed, but that term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of that debt for another.

[1985, c. 702, §2 (NEW) .]

5. **Debt.** "Debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services that are the subject of the transaction are primarily for personal, family or household purposes, whether or not the obligation has been reduced to judgment. "Debt" includes any obligation or alleged obligation for payment of child support owed to, or owed by, a resident of this State and any obligation or alleged obligation relating to a check returned because of insufficient funds if a consumer is subject to an enforcement program operated by a private entity.

[2007, c. 214, §1 (AMD) .]

6. **Debt collector.** "Debt collector" means any person conducting business in this State, the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. "Debt collector" includes persons who furnish collection systems carrying a name that simulates the name of a debt collector and who supply forms or form letters to be used by the creditor even though the forms direct the debtor to make payments directly

to the creditor. Notwithstanding the exclusion provided by section 11003, subsection 7, "debt collector" includes any creditor who, in the process of collecting the creditor's own debts, uses any name other than the creditor's that would indicate that a 3rd person is collecting or attempting to collect these debts. "Debt collector" includes any attorney-at-law whose principal activities include collecting debts as an attorney on behalf of and in the name of clients, except that any such attorney licensed to practice law in this State is subject exclusively to subchapter 2 and any such attorney not licensed to practice law in this State is subject to this entire chapter. "Debt collector" also includes any person regularly engaged in the enforcement of security interests securing debts, including a repossession company and a residential real estate property preservation provider. "Debt collector" does not include any person who retrieves collateral when a consumer has voluntarily surrendered possession. A person is regularly engaged in the enforcement of security interests if that person enforced security interests more than 5 times in the previous calendar year. If a person does not meet these numerical standards for the previous calendar year, the numerical standards must be applied to the current calendar year.

[2013, c. 521, Pt. E, §1 (AMD) .]

7. **Location information.** "Location information" means a consumer's place of abode and his telephone number at that place or his place of employment.

[1985, c. 702, §2 (NEW) .]

8. **Person.** "Person" means any natural person, corporation, trust, partnership, incorporated or unincorporated association and any other legal entity.

[1985, c. 702, §2 (NEW) .]

8-A. **Residential real estate property preservation provider.** "Residential real estate property preservation provider" means a person who regularly provides residential real estate property preservation services. "Residential real estate property preservation provider" does not include a supervised financial organization, a supervised lender, a person licensed by the Plumbers' Examining Board, a person licensed by the Electricians' Examining Board, a person licensed by the Department of Professional and Financial Regulation under chapter 131, a person licensed by the Maine Fuel Board or a person licensed by the Real Estate Commission.

[2013, c. 521, Pt. E, §2 (NEW) .]

8-B. **Residential real estate property preservation services.** "Residential real estate property preservation services" means those services undertaken at the direction of a person holding or enforcing a mortgage on residential real estate that is in default or in which the property is presumed abandoned in entering or arranging for entry into a building to perform the services of winterizing the residence, changing the door locks or removing unsecured items from the residence.

[2013, c. 521, Pt. E, §2 (NEW) .]

9. **Administrator.** "Administrator" means the Superintendent of Consumer Credit Protection.

[1995, c. 309, §29 (AFF); 1995, c. 309, §22 (RPR); 2007, c. 273, Pt. B, §6 (REV); 2007, c. 695, Pt. A, §47 (AFF) .]

10. **Supervised financial organization.** "Supervised financial organization" has the same meaning as defined in Title 9-A, section 1-301, subsection 38-A.

[1997, c. 66, §8 (AMD) .]

SECTION HISTORY

1985, c. 702, §2 (NEW). 1993, c. 126, §1 (AMD). 1995, c. 309, §§22,23 (AMD). 1995, c. 309, §29 (AFF). 1995, c. 397, §101 (AMD). 1997, c. 66, §8 (AMD). 1999, c. 184, §20 (AMD). 2003, c. 562, §2 (AMD). 2005, c. 475, §1 (AMD). 2007, c. 214, §1 (AMD). 2007, c. 273, Pt. B, §7 (AFF). 2007, c. 273, Pt. B, §6 (REV). 2007, c. 695, Pt. A, §47 (AFF). 2013, c. 521, Pt. E, §§1, 2 (AMD).

§11003. EXCLUSIONS

The term debt collector does not include: [1985, c. 702, §2 (NEW).]

1. **Officers or employees of a creditor.** Any officer or employee of a creditor while, in the name of the creditor, collecting debts for that creditor;

[1985, c. 702, §2 (NEW) .]

2. **Persons related by common ownership or affiliated by corporate control.** Any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of that person is not the collection of debts;

[1985, c. 702, §2 (NEW) .]

3. **Officers or employees of the United States or any state.** Any officer or employee of the United States or any state or agencies or instrumentalities of the State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;

[1985, c. 702, §2 (NEW) .]

4. **Persons serving legal process.** Any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

[1985, c. 702, §2 (NEW) .]

5. **Nonprofit organizations performing consumer credit counseling.** Any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from those consumers and distributing those amounts to creditors;

[1985, c. 702, §2 (NEW) .]

6. **Attorneys-at-law collecting debts on behalf of a client.**

[1993, c. 126, §2 (RP) .]

7. **Persons collecting debts owed or due to another.** Any person collecting or attempting to collect any debt owed or due, or asserted to be owed or due, to another to the extent that the activity:

A. Is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; [1985, c. 702, §2 (NEW).]

B. Concerns a debt which was originated by that person; [1985, c. 702, §2 (NEW).]

C. Concerns a debt which was not in default at the time it was obtained by that person; or [1985, c. 702, §2 (NEW).]

D. Concerns a debt obtained by that person as a secured party in a commercial credit transaction involving the creditor; [2009, c. 99, §1 (AMD).]

[2009, c. 99, §1 (AMD) .]

8. **Collection activities related to the operation of a business.** Any person whose collection activities are confined to and directly related to the operation of a business other than that of a debt collector, such as, but not limited to, financial institutions regulated under Title 9-B; and

[2009, c. 99, §2 (AMD) .]

9. **Certain pretrial diversion programs for issuers of worthless checks.** A private entity operating a worthless check enforcement program that meets the conditions set forth in section 11013-A, subsection 3.

[2009, c. 99, §3 (NEW) .]

SECTION HISTORY
1985, c. 702, §2 (NEW). 1993, c. 126, §2 (AMD). 2009, c. 99, §§1-3 (AMD).

Subchapter 2: DEBT COLLECTION ACTIVITIES

§11011. ACQUISITION OF LOCATION INFORMATION

1. **Communication with person other than consumer.** Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall:

A. Identify himself; state that he is confirming or correcting location information concerning the consumer; and, only if expressly requested, identify his employer; [1985, c. 702, §2 (NEW).]

B. Not state that the consumer owes any debt; [1985, c. 702, §2 (NEW).]

C. Not communicate with any such person more than once, unless requested to do so by that person or unless the debt collector reasonably believes that the earlier response of that person is erroneous or incomplete and that the person now has correct or complete location information; [1985, c. 702, §2 (NEW).]

D. Not communicate by postcard; [1985, c. 702, §2 (NEW).]

E. Not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; and [1985, c. 702, §2 (NEW).]

F. After the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, that attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to communication from the debt collector. [1985, c. 702, §2 (NEW).]

[1985, c. 702, §2 (NEW) .]

SECTION HISTORY
1985, c. 702, §2 (NEW).

§11012. COMMUNICATION IN CONNECTION WITH DEBT COLLECTION

1. **Communication with the consumer generally.** Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt:

A. At any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 a.m. and before 9 p.m., local time at the consumer's location; [1985, c. 702, §2 (NEW).]

B. If the debt collector knows that the consumer is represented by an attorney with respect to that debt and has knowledge of, or can readily ascertain, that attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; or [1985, c. 702, §2 (NEW).]

C. At the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving a communication. [1985, c. 702, §2 (NEW).]

[1985, c. 702, §2 (NEW) .]

2. **Communication with 3rd parties.** Except as provided in section 11011, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a post-judgment judicial remedy, a debt collector shall not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor or the attorney of the debt collector.

[1985, c. 702, §2 (NEW) .]

3. **Ceasing communication.** If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to that debt, except:

A. To advise the consumer that the debt collector's further efforts are being terminated; [1985, c. 702, §2 (NEW).]

B. To notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by the debt collector or creditor; or [1985, c. 702, §2 (NEW).]

C. Where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy. [1985, c. 702, §2 (NEW).]

If the notice from the consumer is made by mail, notification shall be complete upon receipt.

[1985, c. 702, §2 (NEW) .]

4. **Consumer defined.** For the purpose of this section, the term consumer includes the consumer's spouse; parent, if the consumer is a minor; guardian; executor; or administrator.

[1985, c. 702, §2 (NEW) .]

SECTION HISTORY
1985, c. 702, §2 (NEW).

§11013. PROHIBITED PRACTICES

1. **Harassment or abuse.** A debt collector may not engage in any conduct, the natural consequence of which is to harass, oppress or abuse any person in connection with the collection of a debt. Without limiting the general application of this subsection, the following conduct is a violation of this section:

A. The use or threat of use of violence or other criminal means to harm the physical person, reputation or property of any person; [1985, c. 702, §2 (NEW).]

B. The use of obscene or profane language, or language the natural consequence of which is to abuse the hearer or reader; [1985, c. 702, §2 (NEW).]

C. The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of Title 10, chapter 209-B; [2013, c. 588, Pt. C, §16 (AMD).]

D. The advertisement for sale of any debt to coerce payment of the debt; [1985, c. 702, §2 (NEW).]

E. Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse or harass any person at the called number; [1985, c. 702, §2 (NEW).]

F. Except as provided in section 11011, the placement of telephone calls without meaningful disclosure of the caller's identity; and [1985, c. 702, §2 (NEW).]

G. The use of "shame cards," "shame automobiles" or similar devices. [1985, c. 702, §2 (NEW).]

[2013, c. 588, Pt. C, §16 (AMD) .]

2. False or misleading representations. A debt collector may not use any false, deceptive or misleading representation or means in connection with the collection of any debt. Without limiting the general application of this subsection, the following conduct is a violation of this section:

A. The false representation or implication that the debt collector is vouched for, bonded by or affiliated with the United States or any state, including the use of any badge, uniform, seal, insignia or facsimile; [1985, c. 702, §2 (NEW).]

B. The false representation of:

(1) The character, amount or legal status of any debt; or

(2) Any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt; [1985, c. 702, §2 (NEW).]

C. The false representation or implication that any individual is an attorney or that any communication is from an attorney; [1985, c. 702, §2 (NEW).]

D. The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment or sale of any property or wages of any person, unless that action is lawful and the debt collector or creditor intends to take that action; [1985, c. 702, §2 (NEW).]

E. The threat to take any action that may not legally be taken or that is not intended to be taken; [1985, c. 702, §2 (NEW).]

F. The false representation or implication that a sale, referral or other transfer of any interest in a debt shall cause the consumer to:

(1) Lose any claim or defense to payment of the debt; or

(2) Become subject to any practice prohibited by this Act or the Maine Consumer Credit Code, Title 9-A; [1985, c. 702, §2 (NEW).]

G. The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer; [1985, c. 702, §2 (NEW).]

H. Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed; [1985, c. 702, §2 (NEW).]

I. The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued or approved by any court, official or agency of the United States or any state, or which creates a false impression as to its source, authorization or approval; [1985, c. 702, §2 (NEW).]

J. The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer; [1985, c. 702, §2 (NEW).]

K. [1997, c. 155, Pt. D, §1 (RP).]

K-1. The failure to disclose in the initial written communication with the consumer and, if the initial communication with the consumer is oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose, and the failure to disclose in subsequent communications that the communication is from a debt collector, except that this paragraph does not apply to a formal pleading made in connection with a legal action; [1997, c. 155, Pt. D, §2 (NEW).]

L. The false representation or implication that accounts have been turned over to innocent purchasers for value; [1985, c. 702, §2 (NEW).]

M. The false representation or implication that documents are legal process; [1985, c. 702, §2 (NEW).]

N. The use of any business, company or organization name other than the true name of the debt collector's business, company or organization; [1985, c. 702, §2 (NEW).]

O. The false representation or implication that documents are not legal process forms or do not require action by the consumer; or [1985, c. 702, §2 (NEW).]

P. The false representation or implication that a debt collector operates or is employed by a consumer reporting agency, as defined by Title 10, section 1308, subsection 3. [2013, c. 588, Pt. C, §17 (AMD).]

[2013, c. 588, Pt. C, §17 (AMD) .]

3. Unfair practices. A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of this subsection, the following conduct is a violation of this section:

A. The collection of any amount, including any interest, fee, charge or expense incidental to the principal obligation, unless the amount is expressly authorized by the agreement creating the debt or permitted by law; [1985, c. 702, §2 (NEW).]

B. The acceptance by a debt collector from any person of a check or other payment instrument postdated by more than 5 days, unless that person is notified in writing of the debt collector's intent to deposit that check or instrument not more than 10 nor less than 3 business days prior to the deposit; [1985, c. 702, §2 (NEW).]

C. The solicitation by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution; [1985, c. 702, §2 (NEW).]

D. Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on the check or instrument; [1985, c. 702, §2 (NEW).]

E. Causing charges to be made to any person for communications by concealment of the true purpose of the communication. These charges include, but are not limited to, collect telephone calls and telegram fees; [1985, c. 702, §2 (NEW).]

F. Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if:

(1) There is no present right to possession of the property claimed as collateral through an enforceable security interest;

(2) There is no present intention to take possession of the property; or

(3) The property is exempt by law from the dispossession or disablement; [1985, c. 702, §2 (NEW).]

G. Communicating with a consumer regarding a debt by postcard; [1985, c. 702, §2 (NEW).]

H. Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if that name does not indicate that he is in the debt collection business; [1985, c. 702, §2 (NEW).]

I. Using or employing notaries public, constables, sheriffs or any other officer authorized to serve legal papers in the collection of a claim; [1985, c. 702, §2 (NEW).]

J. Exercising authority on behalf of a creditor to employ the services of lawyers, unless the creditor has specifically authorized the agency in writing to do so and the debt collector's course of conduct is at all times consistent with the true relationship of attorney and client between the lawyer and the creditor, such that the debt collector will not demand or obtain in any manner a share of the compensation for services performed by a lawyer in collecting a claim; [1985, c. 702, §2 (NEW).]

K. Failing to return any claim or claims upon written request of the creditor, claimant or forwarder after the tender of such amounts, if any, as may be due and owing to the debt collector, or refusing or intentionally failing to account to its clients for all money collected within 30 days from the last day of the month in which the money is collected or refusing, or intentionally failing, to return to the creditor all valuable papers deposited with a claim when that claim is returned; [1985, c. 702, §2 (NEW).]

L. Commingling money collected for a creditor with the debt collector's own funds or using any part of a creditor's money in the conduct of the debt collector's business; [1985, c. 702, §2 (NEW).]

M. Engaging in the business of lending money to any person or contacting any person for the purpose of securing a loan for any person with which to pay any claim left with it for collection, or recommending any person or persons as a source of funds to pay any such claim; or [1985, c. 702, §2 (NEW).]

N. Threatening to bring legal action in the debt collector's own name or instituting a suit on behalf of others or furnishing legal advice, except that a debt collector who is also an attorney may bring an action under this paragraph in the name of the creditor in any division or county permitted by 15 United States Code, Section 1692i and may furnish legal advice to the creditor with respect to a debt. [2009, c. 245, §8 (RPR).]

[2009, c. 245, §8 (AMD) .]

4. **Reporting to consumer reporting agency.** A debt collector may not report solely in its own name any credit or debt information to a consumer reporting agency, as defined by Title 10, section 1308, subsection 3.

[2013, c. 588, Pt. C, §18 (AMD) .]

5. **Reporting certain unpaid medical expenses; court or administrative orders.** A debt collector may not report to a consumer reporting agency any credit or debt information regarding overdue medical expenses owed by a parent for a minor child if the debt collector is notified orally or in writing of the existence of a court order or administrative order identifying another person as the party responsible for payment of medical

expenses for that minor child. In addition, a report may not be made until after the debt collector has notified, or made a good faith effort to notify, the responsible party of that party's obligation to pay the overdue medical expenses. The debt collector may request reasonable verification of the order, including requesting a certified copy of the order.

[1993, c. 365, §2 (NEW) .]

SECTION HISTORY
1985, c. 702, §2 (NEW). 1991, c. 453, §8 (AMD). 1991, c. 453, §10 (AFF). 1993, c. 365, §2 (AMD). 1997, c. 155, §§D1, 2 (AMD). 2009, c. 245, §8 (AMD). 2013, c. 588, Pt. C, §§16-18 (AMD).

§11013-A. EXCEPTION FOR CERTAIN PRETRIAL DIVERSION PROGRAMS FOR ISSUERS OF WORTHLESS CHECKS OPERATED BY PRIVATE ENTITIES

1. **Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Check" has the same meaning as in Title 14, section 6071, subsection 4. [2009, c. 99, §4 (NEW).]

B. "State or district attorney" means the chief elected or appointed prosecuting attorney in a district, county, municipality or comparable jurisdiction, including the Attorney General acting as chief elected or appointed prosecuting attorney in a district, county, municipality or comparable jurisdiction, who is responsible for the prosecution of state crimes and violations of jurisdiction-specific local ordinances. [2009, c. 99, §4 (NEW).]

C. "Worthless check violation" means a violation of Title 17-A, section 708, subsection 1, paragraph A. [2009, c. 99, §4 (NEW).]

[2009, c. 99, §4 (NEW) .]

2. **Pretrial diversion program for issuers of worthless checks.** If a state or district attorney wants to be excluded from consideration as a debt collector as provided in section 11003, subsection 9, that state or district attorney shall establish, within the jurisdiction of that state or district attorney and with respect to alleged worthless check violations that do not involve a check described in subsection 4, a pretrial diversion program for issuers of worthless checks who agree to participate voluntarily in that program to avoid criminal prosecution.

[2009, c. 99, §4 (NEW) .]

3. **Conditions for exception.** A private entity operating a pretrial diversion program for issuers of worthless checks that meets the following requirements is excluded from being considered a debt collector.

A. The private entity must operate the pretrial diversion program for issuers of worthless checks described in subsection 2 subject to an administrative support services contract with the state or district attorney and under the direction, supervision and control of that state or district attorney. [2009, c. 99, §4 (NEW).]

B. In the course of performing duties delegated to it by a state or district attorney under an administrative support services contract, the private entity referred to in paragraph A:

(1) Shall comply with the criminal laws of the State;

(2) Shall conform with the terms of the administrative support services contract and directives of the state or district attorney;

(3) May not exercise independent prosecutorial discretion;

(4) Shall contact any issuer of an alleged worthless check for the purposes of participating in a pretrial diversion program for issuers of worthless checks as described in subsection 2:

(a) Only as a result of a determination by the state or district attorney that probable cause of a worthless check violation under state criminal law exists, and that contact with the issuer of an alleged worthless check for purposes of participation in the program is appropriate; and

(b) Only if the issuer of an alleged worthless check has failed to pay the worthless check after demand for payment is made for the check amount pursuant to state law;

(5) Shall include as part of an initial written communication with an issuer of an alleged worthless check a clear and conspicuous statement that:

(a) The issuer of an alleged worthless check may dispute the validity of any alleged worthless check violation;

(b) When the issuer of an alleged worthless check knows, or has reasonable cause to believe, that the alleged worthless check violation is the result of theft or forgery of the check, identity theft or other fraud that is not the result of the conduct of the issuer of an alleged worthless check, the issuer of the alleged worthless check may file a crime report with the appropriate law enforcement agency; and

(c) If the issuer of an alleged worthless check notifies the private entity or the state or district attorney in writing, not later than 30 days after being contacted for the first time pursuant to subparagraph (4), that there is a dispute pursuant to this subsection, before further restitution efforts are pursued, the state or district attorney or an employee of that state or district attorney must make a determination that there is probable cause to believe that a crime has been committed; and

(6) May charge fees only in connection with services under the administrative support services contract under paragraph A that have been authorized by the contract with the state or district attorney. [2009, c. 99, §4 (NEW).]

[2009, c. 99, §4 (NEW) .]

4. **Certain checks excluded.** A check described in this subsection is not considered a worthless check eligible for the pretrial diversion program for issuers of worthless checks described in subsection 2 if the check involves or is subsequently found to involve:

A. A postdated check presented in connection with a payday loan or other similar transaction when the payee of the check knew that the issuer had insufficient funds at the time the check was made, drawn or delivered; [2009, c. 99, §4 (NEW).]

B. A stop payment order when the issuer acted in good faith and with reasonable cause in stopping payment on the check; [2009, c. 99, §4 (NEW).]

C. A check dishonored because of an adjustment to the issuer's account by the financial institution holding that account without providing notice to the person at the time the check was made, drawn or delivered; [2009, c. 99, §4 (NEW).]

D. A check for partial payment of a debt where the payee had previously accepted partial payment for that debt; [2009, c. 99, §4 (NEW).]

E. A check issued by a person who was not competent or was not of legal age to enter into a legal contractual obligation at the time the check was made, drawn or delivered; [2009, c. 99, §4 (NEW).]

F. A check issued to pay an obligation arising from a transaction that was illegal in the jurisdiction of the state or district attorney at the time the check was made, drawn or delivered; or [2009, c. 99, §4 (NEW).]

G. A check that is the result of theft or forgery of the check, identity theft or other fraud that is not the result of the conduct of the alleged worthless check offender. [2009, c. 99, §4 (NEW).]

[2009, c. 99, §4 (NEW) .]

5. **Registration.** Notwithstanding the exemptions in subsections 3 and 4, a private entity that operates a pretrial diversion program for issuers of worthless checks pursuant to this section shall register with the administrator on forms acceptable to the administrator and in a manner consistent with section 11031, subsection 2. Before granting a registration pursuant to this subsection, the administrator shall:

A. Review the administrative support services contract under subsection 3, paragraph A between the private entity and the state or district attorney; [2009, c. 99, §4 (NEW).]

B. Review all form communications to issuers of alleged worthless checks that will be used as part of the pretrial diversion program for issuers of worthless checks; and [2009, c. 99, §4 (NEW).]

C. Review the quality controls to be implemented by the state or district attorney and the private entity to ensure continued compliance with this section and to maintain the exemption granted in section 11003, subsection 9. [2009, c. 99, §4 (NEW).]

[2009, c. 99, §4 (NEW) .]

6. **Enforcement.** To ensure compliance with this section, the administrator may receive and act on complaints in accordance with Title 9-A, section 6-104, conduct compliance examinations pursuant to Title 9-A, section 6-106 and exercise regulatory and remedial authority pursuant to Title 9-A, Article 6.

[2009, c. 99, §4 (NEW) .]

SECTION HISTORY
2009, c. 99, §4 (NEW).

§11014. VALIDATION OF DEBTS

1. **Written notice.** Within 5 days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing:

A. The amount of the debt; [1985, c. 702, §2 (NEW).]

B. The name of the creditor to whom the debt is owed; [1985, c. 702, §2 (NEW).]

C. A statement that unless the consumer, within 30 days after receipt of the notice, disputes the validity of the debt or any portion of the debt, the debt will be assumed to be valid by the debt collector; [1985, c. 702, §2 (NEW).]

D. A statement that if the consumer notifies the debt collector in writing within the 30-day period that the debt, or any portion of the debt, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of the verification or judgment will be mailed to the consumer by the debt collector; and [1985, c. 702, §2 (NEW).]

E. A statement that, upon the consumer's written request within the 30-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor. [1985, c. 702, §2 (NEW).]

[1985, c. 702, §2 (NEW) .]

2. **Cease collection.** If the consumer notifies the debt collector in writing within the 30-day period described in subsection 1 that the debt, or any portion of the debt, is disputed or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt or any

disputed portion of the debt, until the debt collector obtains verification of the debt or a copy of the judgment, or the name and address of the original creditor, and a copy of the verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.

[1985, c. 702, §2 (NEW) .]

3. **Liability.** The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer.

[1985, c. 702, §2 (NEW) .]

SECTION HISTORY
1985, c. 702, §2 (NEW).

§11015. MULTIPLE DEBTS

If any consumer owes multiple debts and makes any single payment to any debt collector with respect to the debts, the debt collector may not apply that payment to any debt which is disputed by the consumer and, where applicable, shall apply that payment in accordance with the consumer's directions. [1985, c. 702, §2 (NEW).]

SECTION HISTORY
1985, c. 702, §2 (NEW).

§11016. FURNISHING CERTAIN DECEPTIVE FORMS

1. **Unlawful activity.** It is unlawful to design, compile and furnish any form knowing that the form would be used to create the false belief in a consumer that a person other than the creditor of the consumer is participating in the collection of or in an attempt to collect a debt the consumer allegedly owed the creditor, when in fact that person is not so participating.

[1985, c. 702, §2 (NEW) .]

2. **Extent of liability.** Any person who violates this section shall be liable to the same extent and in the same manner as a debt collector is liable under section 11054 for failure to comply with a provision of this Act.

[1985, c. 702, §2 (NEW) .]

SECTION HISTORY
1985, c. 702, §2 (NEW).

§11017. REPOSSESSION ACTIVITY

1. **Right to take possession after default.** Except in the case of a residential real estate property preservation provider, a debt collector acting on behalf of a creditor may take possession of collateral only if possession can be taken without entry into a dwelling, unless that entry has been authorized after default and without the use of force or other breach of the peace.

[2013, c. 521, Pt. E, §3 (AMD) .]

2. **Return of private property.** Except in the case of a residential real estate property preservation provider, a debt collector shall inventory any unsecured property taken with repossessed collateral and immediately notify the consumer that the property will be made available in a manner convenient to the consumer.

[2013, c. 521, Pt. E, §3 (AMD) .]

3. **Special treatment for necessary medical device or equipment in a repossessed vehicle.** A consumer who has unsecured property taken when a vehicle is repossessed pursuant to Title 29-A, section 665, subsection 6 may have that property returned by complying with this subsection.

The consumer shall notify the debt collector that:

A. Unsecured property was taken with a repossessed vehicle; [2009, c. 45, §2 (NEW).]

B. The unsecured property includes a medical device or equipment necessary for health or welfare; and [2009, c. 45, §2 (NEW).]

C. The consumer does not have practicable means to retrieve the medical device or equipment. [2009, c. 45, §2 (NEW).]

If the consumer makes a reasonable request for the return of the medical device or equipment, the debt collector shall arrange to have the medical equipment or device promptly returned to the consumer. If the debt collector incurs expenses in actually returning the medical device or equipment to the consumer, those reasonable expenses are considered a reasonable charge incurred in realizing on a security interest in personal property, pursuant to Title 9-A, section 3-402, subsection 1, paragraph B, which may be added to the consumer's indebtedness.

[2009, c. 45, §2 (NEW) .]

4. **Residential real estate property preservation.** A residential real estate property preservation provider may enter into a dwelling only if authorized by the terms of a note, contract or mortgage. The provider may not use force or effect a breach of the peace against any person. The provider shall inventory any unsecured items removed from the dwelling and immediately notify the appropriate consumer that the unsecured items will be made available in a manner convenient to the consumer. The provider shall make a permanent record of all steps taken to preserve and secure the dwelling and shall make that record and the inventory of removed unsecured items available to the consumer upon written request.

[2013, c. 521, Pt. E, §4 (NEW) .]

SECTION HISTORY
1993, c. 126, §3 (NEW). 2009, c. 45, §2 (AMD). 2013, c. 521, Pt. E, §§3, 4 (AMD).

§11018. PRIVACY OF CONSUMER FINANCIAL INFORMATION

A collection agency or repossession company shall comply with the provisions of the federal Gramm-Leach-Bliley Act, 15 United States Code, Section 6801 et seq. (1999) and the applicable implementing federal Privacy of Consumer Information regulations, as adopted by the Office of the Comptroller of the Currency, 12 Code of Federal Regulations, Part 40 (2001); the Board of Governors of the Federal Reserve System, 12 Code of Federal Regulations, Part 216 (2001); the Federal Deposit Insurance Corporation, 12 Code of Federal Regulations, Part 332 (2001); the Office of Thrift Supervision, 12 Code of Federal Regulations, Part 573 (2001); the National Credit Union Administration, 12 Code of Federal Regulations, Part 716 (2001); the Federal Trade Commission, 16 Code of Federal Regulations, Part 313 (2001); or the Securities and Exchange Commission, 17 Code of Federal Regulations, Part 248 (2001), if the collection

agency or repossession company is a financial institution as defined in those regulations. This section is not intended to permit the release of health care information except as permitted by Title 22, section 1711-C or Title 24-A, chapter 24. [2001, c. 262, Pt. E, §4 (NEW).]

SECTION HISTORY
2001, c. 262, §E4 (NEW).

Subchapter 3: LICENSING AND ADMINISTRATION

§11031. LICENSES

1. **Licenses required.** Except as provided in this subchapter, no person may conduct the business of a debt collector in this State without a valid license issued by the superintendent.

[1985, c. 702, §2 (NEW) .]

2. **Licenses.** Licenses granted by the superintendent under this section are for a period of 2 years and expire on July 31st or at such other times as the superintendent may designate. Each license may be renewed biennially as long as the superintendent regards the business as responsible and safe, but in all cases terminate unless renewed by the expiration date. Each license must plainly state the name and business address of the licensee and be posted in a conspicuous place in the office where the business is transacted. The fee for each biennial license is $600. When the unexpired license term of an applicant is or will be less than one year at a time of licensure, the license fee may not exceed 1/2 the biennial license fee. If a licensee desires to carry on business in more than one place, the licensee shall procure a branch office license for each additional place where the business is to be conducted. The fee for each biennial branch office license is $300. Notwithstanding other remedies available under this chapter, applications received after the due date are subject to an additional fee of $100.

[2009, c. 243, §6 (AMD) .]

3. **Applications.** Applications for a license shall comply with the following requirements.

A. The superintendent may require such financial statements and references of all applicants for a license as he deems necessary; and may make or cause to be made an independent investigation concerning the applicant's reputation, integrity, competence and net worth. The investigation may cover all managerial personnel employed by or associated with the applicant. [1985, c. 702, §2 (NEW).]

B. Every application for a license shall be acted upon promptly by the superintendent. If the application complies in form and substance with this Act and the rules promulgated under this Act and the superintendent finds that the applicant is qualified under this Act, the superintendent shall issue a license forthwith. If the application is not sufficient in form or substance, the superintendent shall reject it and notify the applicant of the manner in which it is deficient. The rejection shall be without prejudice to the filing of a new application. If the superintendent finds that the applicant is not qualified under this Act, he shall reject the application and shall give the applicant written notice of the rejection and the reasons for the rejection. In addition, any foreign business, incorporated or unincorporated, before obtaining a license in order to conduct the business of a debt collector within the State shall furnish the superintendent with:

(1) A certified copy of its charter and bylaws; and

(2) A power of attorney appointing the superintendent to be the true and lawful attorney of the business in and for this State, upon whom all lawful process in an action or proceeding against the business may be served with the same effect as if the business existed in this State. The power of attorney shall stipulate and agree on the part of the business that any lawful process against the company which is served on the attorney shall be the same in legal force and validity as if served on the business itself, and that the authority shall continue in force irrevocable so long as any

liability remains outstanding against the business in this State. A certificate of the appointment, duly certified and authenticated shall be filed in the office of the superintendent and a copy certified by him shall be received in evidence in all courts of this State. [1985, c. 702, §2 (NEW).]

[1985, c. 702, §2 (NEW) .]

4. **Change in ownership or management.** A change of 25% or more in ownership or management of any corporate licensee, or of the partners in any partnership licensee, shall require the filing of a new application under this section.

[1985, c. 702, §2 (NEW) .]

SECTION HISTORY
1985, c. 702, §2 (NEW). 1999, c. 184, §24 (AMD). 2009, c. 243, §6 (AMD).

§11032. BOND

The administrator shall require each licensee to file and maintain in force a surety bond, in a form prescribed by and acceptable to the administrator and in such sum as the administrator may deem reasonably necessary, to safeguard the interests of the public. The terms of the bond must run concurrent with the period of time during which the license will be in effect. The bond may be cancelled by the surety on the bond by giving 30 days' notice to the administrator, but the cancellation may not in any manner affect the liability of the surety as to anything occurring prior to the cancellation. [1997, c. 727, Pt. B, §22 (AMD).]

SECTION HISTORY
1985, c. 702, §2 (NEW). 1997, c. 727, §B22 (AMD).

§11033. PRIOR CONVICTIONS AS DISQUALIFICATIONS

In evaluating a license application, the superintendent shall consider the criminal record of any individual applicant, of any partner, if the applicant is a partnership, of any officer or director, if the applicant is a corporation, or of any employee of the foregoing, in accordance with Title 5, chapter 341. No license may be granted to any lawyer, whose license to practice law has been suspended or revoked, during the effective period of that suspension or revocation. [1985, c. 702, §2 (NEW).]

SECTION HISTORY
1985, c. 702, §2 (NEW).

§11034. RULEMAKING

The superintendent may make such reasonable rules, not inconsistent with this chapter, pertaining to the operation of the business of licensees as he deems necessary to safeguard the interest of the public. The rules shall be adopted in the manner prescribed in the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter II. [1985, c. 702, §2 (NEW).]

SECTION HISTORY
1985, c. 702, §2 (NEW).

§11035. ADVISORY RULINGS

The superintendent may issue advisory rulings pertaining to the applicability of any statutory provision or any rule adopted under this chapter and shall provide by rule for the filing and prompt disposition of requests for advisory rulings. [1985, c. 702, §2 (NEW).]

SECTION HISTORY
1985, c. 702, §2 (NEW).

§11036. REPORTS AND RECORDS

1. **Financial statements.** The administrator may at any time require a licensee to submit to the bureau such financial statements as determined necessary for examination by the administrator so that the administrator may determine whether or not the licensee is financially responsible to carry on a debt collector's business.

[1997, c. 727, Pt. B, §23 (AMD) .]

2. **Books and records.** The superintendent shall require the licensee to keep such books and records in this State as will enable the superintendent to determine whether the provisions of this chapter are being complied with. At the superintendent's option, a licensee may keep the books and records in a location outside this State, provided that the licensee agrees to produce the books and records in this State upon demand. Every licensee shall preserve the records of final entry used in that business for a period of 2 years after final remittance is made on any account placed with the licensee for collection or after any account has been returned to the claimant on which one or more payments have been made.

[1985, c. 702, §2 (NEW) .]

SECTION HISTORY
1985, c. 702, §2 (NEW). 1997, c. 727, §B23 (AMD).

§11037. VOLUNTARY TERMINATION OF BUSINESS

1. **Procedures prior to termination.** Prior to voluntarily ceasing business as a debt collector, a licensee shall:

A. Notify the superintendent of the proposed termination at least 30 days prior to its effective date; [1985, c. 702, §2 (NEW).]

B. Notify all creditor clients in writing of the proposed termination at least 30 days prior to its effective date; [1985, c. 702, §2 (NEW).]

C. Provide all creditor clients with detailed final accountings of all debt accounts; [1985, c. 702, §2 (NEW).]

D. Remit all money held in the agency trust account to each respective creditor client; [1985, c. 702, §2 (NEW).]

E. Return all papers, documents and other property of creditor clients provided to the licensee in connection with its collection efforts to those clients; and [1985, c. 702, §2 (NEW).]

F. Return its license to the superintendent for cancellation. [1985, c. 702, §2 (NEW).]

[1985, c. 702, §2 (NEW) .]

2. **Transfer of accounts.** No licensee, when terminating its business, may transfer an account to another debt collector without first securing the written permission of the client.

[1985, c. 702, §2 (NEW) .]

SECTION HISTORY
1985, c. 702, §2 (NEW).

§11038. INSOLVENCY AND LIQUIDATION

1. **Insolvency.** If the superintendent determines that a licensee located in this State is insolvent or that he has collected accounts but has failed to remit money due to any claimant or forwarder within 30 days from the end of the month in which collection was made or, when the license of a debt collector has expired or terminated for any reason whatsoever, the superintendent, if he determines that action necessary to protect the public interest, may apply to the Superior Court of the county in which the main office of the debt collector is located, authorizing him to take possession of the assets and the books and records of the licensee for the purpose of liquidating its business and for such other relief as the nature of the case and the interest of the claimants or forwarders may require. The court, after citing the licensee to show cause why the superintendent should not be authorized to take possession of the assets and books of accounts and records for the purpose of liquidating the business of the licensee, and, after hearing the allegations and proofs of the parties and determining the facts, may upon the merits dismiss the application or, if it finds that action necessary for the protection of the public, issue its order authorizing the superintendent to take possession of the books and records and to liquidate the business and granting such other relief as it deems necessary under the circumstances.

[1985, c. 702, §2 (NEW) .]

2. **Powers and duties.** In every case where the court issues an order authorizing the superintendent to take possession of the books and records and to liquidate the business of a licensee, the superintendent shall be vested with all of the powers, duties, authority and responsibility of a receiver, and without limiting the generality of this subsection and subject to the approval of the court.

A. The liquidation of the business shall be made by and under the supervision of the superintendent, either in the name of the superintendent or in the name of the licensee, and the superintendent or his successor shall be vested with title to all of the assets, including the proceeds of the financial security which has been filed with the superintendent and the proceeds of any and all money paid directly to the claimant or forwarder by any debtor prior to the date of the order. Money paid to the licensee or to the superintendent after the date of the order shall be disposed of by the superintendent. [1985, c. 702, §2 (NEW).]

B. The superintendent for the purpose of collection or liquidation may sell, assign, convey and transfer or approve the sale, assignment, conveyance and transfer of the assets of the debt collector under such terms and conditions as the superintendent deems best for the best interests of the claimants of the debt collector. [1985, c. 702, §2 (NEW).]

C. The superintendent shall cause notice to be given by advertisement in such newspapers as he may direct weekly for 4 consecutive weeks after the issue of the order authorizing him to take possession of the assets of the debt collector, calling on all persons who may have claims against the licensee to bring the claims to the superintendent and make legal proof of the claims at a place and time to be specified. The superintendent shall mail a similar notice to all persons whose names appear as claimants or forwarders upon the books and records of the licensee or as may appear in the records of the superintendent. Any claimant or forwarder whose portion of the collections has not been properly remitted shall file a claim, which shall be allowed for the amount actually due the claimant or forwarder after deduction of a commission or fee that may be due and owing the licensee. If the superintendent doubts the justice and validity of any claim, he may reject the claim and serve notice of that rejection

upon the claimant, either by mail or personally. An affidavit of service of notice, which shall be prima facie evidence of service, shall be filed with the superintendent. The claimant may, within 30 days after receipt of notice of rejection, file a petition in the court in which the proceedings are pending to establish his claim or claims. Claims presented after the expiration of the time fixed in the notice to the claimants or forwarders shall be entitled to receive only liquidating dividends declared after presentation, unless otherwise ordered by the court. The court may fix a date after which all claimants may be barred. [1985, c. 702, §2 (NEW).]

D. The assets of the licensee in liquidation, exclusive of any bond proceeds, shall be disbursed in the following order:

(1) Expenses of liquidation;

(2) The full amount of claims of each claimant or forwarder of the licensee whose claim against the licensee has been approved by the superintendent;

(3) Reserves for unclaimed and unpaid collections;

(4) General creditors; and

(5) Residue to licensee. [1985, c. 702, §2 (NEW).]

E. All accounts and valuable papers given to the licensee by the claimant or forwarders in possession of the superintendent pertaining to accounts placed with the licensee for collection shall be returned to the claimant or forwarder by the superintendent within 30 days after verification has been made. [1985, c. 702, §2 (NEW).]

F. Nothing contained in this subsection may preclude a creditor of a debt collector from prosecuting any and all legal actions and pursuing any and all remedies afforded him by the laws of this State for collection of debts until such time as the superintendent takes possession of the debt collector's agency under this section. [1985, c. 702, §2 (NEW).]

[1985, c. 702, §2 (NEW) .]

SECTION HISTORY
1985, c. 702, §2 (NEW).

§11039. FEES

The aggregate of license fees provided for by this chapter is appropriated for the use of the Bureau of Consumer Credit Protection. Any balance of these funds shall not lapse, but shall be carried forward to be expended for the same purposes in the following fiscal year. [1995, c. 309, §26 (AMD); 1995, c. 309, §29 (AFF); 2007, c. 273, Pt. B, §5 (REV); 2007, c. 695, Pt. A, §47 (AFF).]

SECTION HISTORY
1985, c. 702, §2 (NEW). 1995, c. 309, §26 (AMD). 1995, c. 309, §29 (AFF). 2007, c. 273, Pt. B, §7 (AFF). 2007, c. 273, Pt. B, §5 (REV). 2007, c. 695, Pt. A, §47 (AFF).

§11040. PENALTY

Any person who carries on business as a debt collector without first obtaining a license pursuant to this subchapter, or who carries on that business after the revocation, suspension or expiration of any license, or who performs duties relating to the conduct of a debt collector on behalf of another person as an officer,

director, employee, agent or in any other capacity, unless the other person has first obtained a license which has not expired, but been revoked nor suspended is guilty of a Class E crime. [1985, c. 702, §2 (NEW).]

SECTION HISTORY
1985, c. 702, §2 (NEW).

Subchapter 4: ENFORCEMENT

§11051. INVESTIGATION, SUSPENSION AND REVOCATION OF LICENSES

The Bureau of Consumer Credit Protection may examine or investigate the records and practices of any person the superintendent believes has engaged in conduct governed by this chapter in accordance with Title 9-A, section 6-106, may review and approve collection letters proposed for use in this State and may charge for expenses incurred pursuant to Title 9-A, section 6-106, subsection 6. The superintendent may file a complaint with the District Court to suspend or revoke a license issued pursuant to this chapter, if, after investigation or hearing, or both, the superintendent has reason to believe that the licensee has violated any provisions of this chapter or any administrative rules issued pursuant to this chapter, or has failed to maintain its financial condition sufficient to qualify for a license on an original application. [2009, c. 243, §7 (AMD).]

SECTION HISTORY
1985, c. 702, §2 (NEW). 1989, c. 502, §A116 (AMD). RR 1995, c. 1, §28 (AFF). RR 1995, c. 1, §27 (COR). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 273, Pt. B, §7 (AFF). 2007, c. 273, Pt. B, §§5, 6 (REV). 2007, c. 695, Pt. A, §47 (AFF). 2009, c. 243, §7 (AMD).

§11051-A. ENFORCEMENT; FINANCIAL INSTITUTIONS

When a supervised financial organization is the creditor, the Superintendent of Financial Institutions has concurrent examination authority under section 11051. The administrator and the Superintendent of Financial Institutions shall cooperate in enforcing this chapter. [1995, c. 309, §24 (NEW); 1995, c. 309, §29 (AFF); 2001, c. 44, §11 (AMD); 2001, c. 44, §14 (AFF).]

SECTION HISTORY
1995, c. 309, §24 (NEW). 1995, c. 309, §29 (AFF). 2001, c. 44, §11 (AMD). 2001, c. 44, §14 (AFF).

§11052. APPEALS

Any appeal from the decision of the superintendent may be taken in accordance with Title 5, chapter 375, subchapter VII. [1985, c. 702, §2 (NEW).]

SECTION HISTORY
1985, c. 702, §2 (NEW).

§11053. CIVIL PENALTY

The superintendent may, through the Attorney General, bring a civil action for a penalty not to exceed $5,000 against any person who willfully violates this chapter. No civil penalty pursuant to this section may be imposed for violations of this chapter occurring more than 2 years before the civil action is brought. [1985, c. 702, §2 (NEW).]

SECTION HISTORY
1985, c. 702, §2 (NEW).

§11054. CIVIL LIABILITY

1. **Failure to comply with this Act.** Except as otherwise provided by this section, any debt collector who fails to comply with any provisions of this Act with respect to any person is liable to that person in an amount equal to the sum of:

A. Any actual damage sustained by that person as a result of such failure; [1985, c. 702, §2 (NEW).]

B. In the case of any action by an individual, such additional damages as the court may allow, but not exceeding $1,000; [1985, c. 702, §2 (NEW).]

C. In the case of a class action:

(1) Such amount for each named plaintiff as may be recovered under paragraph A; and

(2) Such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of $500,000 or 1% of the net worth of the debt collector; and [1985, c. 702, §2 (NEW).]

D. In the case of any successful action to enforce the liability set out in this subsection, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees, reasonable in relation to the work expended and costs. [1985, c. 702, §2 (NEW).]

[1985, c. 702, §2 (NEW) .]

2. **Considerations affecting liability.** In determining the amount of liability in any action under subsection 1, the court shall consider, among other relevant factors:

A. In any individual action, the frequency and persistence of noncompliance by the debt collector, the nature of that noncompliance and the extent to which that noncompliance was intentional; or [1985, c. 702, §2 (NEW).]

B. In any class action, the frequency and persistence of noncompliance by the debt collector, the nature of that noncompliance, the resources of the debt collector, the number of persons adversely affected and the extent to which the debt collector's noncompliance was intentional. [1985, c. 702, §2 (NEW).]

[1985, c. 702, §2 (NEW) .]

3. **Defenses.** A debt collector may not be held liable in any action brought under this chapter if the debt collector shows, by a preponderance of evidence, that the violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

[1985, c. 702, §2 (NEW) .]

4. **Action to enforce liability.** An action to enforce liability under this section shall be brought within one year from the date on which the violation occurs.

[1985, c. 702, §2 (NEW) .]

5. **Action in good faith.** No provision of this section imposing any liability may apply to any act done or omitted in good faith in conformity with any rule or advisory ruling of the superintendent, notwithstanding that, after the act or omission has occurred, the rule or advisory ruling is amended, rescinded, repealed or determined by judicial or other authority to be invalid for any reason.

[1985, c. 702, §2 (NEW) .]

SECTION HISTORY
1985, c. 702, §2 (NEW).

Chapter 111-A: MAINE COMMODITY CODE

Subchapter 1: GENERAL PROVISIONS

§11201. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1985, c. 643, (NEW).]

1. **Board of trade.** "Board of trade" means any person or group of persons engaged in buying or selling any commodity or receiving any commodity for sale on consignment, whether that person or group of persons is characterized as a board of trade, exchange or other form of marketplace.

[1985, c. 643, (NEW) .]

1-A. **Administrator.** "Administrator" means the Securities Administrator.

[1989, c. 542, §68 (NEW) .]

2. **Commodity.** "Commodity" means, except as otherwise specified by the administrator by rule or order, any agricultural, grain or livestock products or by-products, any metals or minerals, including a precious metal set forth in subsection 12, any gem or gemstone, whether characterized as precious, semiprecious or otherwise, any fuel, whether liquid, gaseous or otherwise, any foreign currency and all other goods, articles, products or items of any kind provided that the term commodity shall not include:

A. A numismatic coin whose fair market value is at least 15% higher than the value of the metal it contains; [1985, c. 643, (NEW).]

B. Real property or any timber, agricultural or livestock product grown or raised on real property and offered or sold by the owner or lessee of the real property; or [1985, c. 643, (NEW).]

C. Any work of art offered or sold by art dealers at public auction or offered or sold through a private sale by the owner. [1985, c. 643, (NEW).]

[1989, c. 542, §69 (AMD) .]

3. **Commodity contract.** "Commodity contract" means any account, agreement or contract for the purchase or sale, primarily for speculation or investment purposes and not for use or consumption by the offeree or purchaser, of one or more commodities, whether for immediate or subsequent delivery or whether delivery is intended by the parties, and whether characterized as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures contract, installment or margin contract, leverage contract or otherwise. Any commodity contract offered or sold shall, in the absence of evidence to the contrary, be presumed to be offered or sold for speculation or investment purposes. A commodity contract shall not include any contract or agreement which requires, and under which the purchaser receives, within 28 calendar days from the payment in good funds of any portion of the purchase price, physical delivery of the total amount of each commodity to be purchased under the contract or agreement.

[1985, c. 643, (NEW) .]

4. **Commodity Exchange Act.** "Commodity Exchange Act" means the Act of Congress known as the "Commodity Exchange Act," as amended to the effective date of this chapter, codified at the United States Code, Title 7, Section 1, et seq., and all subsequent amendments, additions or other revisions to that Act, unless the administrator, within 10 days following the effective date of the amendment, addition or revision, disallows its application to this chapter or to any provision of this chapter by rule, regulation or order.

[1989, c. 542, §69 (AMD) .]

5. **Commodity Futures Trading Commission.** "Commodity Futures Trading Commission" means the independent regulatory agency established by Congress to administer the Commodity Exchange Act.

[1985, c. 643, (NEW) .]

6. **Commodity Futures Trading Commission Rule.** "Commodity Futures Trading Commission Rule" means any rule or order of the Commodity Futures Trading Commission in effect on the effective date of this chapter, and all subsequent amendments, additions or other revisions to any rule or order, unless the administrator, within 10 days following the effective date of any such amendment, addition or revision, disallows the application of any such amendment, addition or revision to this chapter or to any provision by rule or order.

[1989, c. 542, §69 (AMD) .]

7. **Commodity merchant.** "Commodity merchant" means any of the following, as defined or described in the Commodity Exchange Act or by Commodity Futures Trading Commission Rule:

A. Futures commission merchant; [1985, c. 643, (NEW).]

B. Commodity pool operator; [1985, c. 643, (NEW).]

C. Commodity trading advisor; [1985, c. 643, (NEW).]

D. Introducing broker; [1985, c. 643, (NEW).]

E. Leverage transaction merchant; [1985, c. 643, (NEW).]

F. An associated person of any of the persons set out in paragraphs A to E; [1985, c. 643, (NEW).]

G. Floor broker; and [1985, c. 643, (NEW).]

H. Any other person, other than a futures association, required to register with the Commodity Futures Trading Commission. [1985, c. 643, (NEW).]

[1985, c. 643, (NEW) .]

8. **Commodity option.** "Commodity option" means any account, agreement or contract giving a party to the account, agreement or contract the right, but not the obligation, to purchase or sell one or more commodities or one or more commodity contracts, or both, whether characterized as an option, privilege, indemnity, bid, offer, put, call, advance guaranty, decline guaranty or otherwise, but shall not include an option traded on a national securities exchange registered with the United States Securities and Exchange Commission.

[1985, c. 643, (NEW) .]

9. **Financial institution.** "Financial institution" means a bank, savings institution or trust company organized under, or supervised pursuant to, the laws of the United States or of any state.

[1985, c. 643, (NEW) .]

10. **Offer or offer to sell.** "Offer" or "offer to sell" includes every offer to sell, offer to purchase or offer to enter into a commodity contract or commodity option.

[1985, c. 643, (NEW) .]

11. **Person.** "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government or a political subdivision of a government, but does not include, a contract

market designated by the Commodity Futures Trading Commission or any clearinghouse of the Commodity Futures Trading Commission or a national securities exchange registered with the United States Securities and Exchange Commission, or any employee, officer or director of such contract market, clearinghouse or exchange acting solely in that capacity.

[1985, c. 643, (NEW) .]

12. **Precious metal.** "Precious metal" means the following in either coin, bullion or other form:

A. Silver; [1985, c. 643, (NEW).]

B. Gold; [1985, c. 643, (NEW).]

C. Platinum; [1985, c. 643, (NEW).]

D. Palladium; [1985, c. 643, (NEW).]

E. Copper; and [1985, c. 643, (NEW).]

F. Such other items as the administrator may specify by rule or order. [1989, c. 542, §70 (AMD).]

[1989, c. 542, §70 (AMD) .]

13. **Sale or sell.** "Sale" or "sell" includes every sale, contract of sale, contract to sell or disposition, for value.

[1985, c. 643, (NEW) .]

14. **Superintendent.**

[1989, c. 542, §71 (RP) .]

SECTION HISTORY
1985, c. 643, (NEW). 1989, c. 542, §§68-71 (AMD).

§11202. UNLAWFUL COMMODITY TRANSACTIONS

Except as otherwise provided in section 11203 or 11204, no person may sell, purchase or offer to sell or purchase any commodity under any commodity contract or any commodity option or offer to enter into or enter into as seller or purchaser any commodity contract or commodity option. [1985, c. 643, (NEW).]

SECTION HISTORY
1985, c. 643, (NEW).

§11203. EXEMPT PERSON TRANSACTIONS

The prohibition in section 11202 does not apply to any transaction offered by and in which any of the following persons, or any employee, officer or director acting solely in that capacity, is the purchaser or seller: [1985, c. 643, (NEW).]

1. **Futures commission merchant or leverage transaction merchant.** A person registered with the Commodity Futures Trading Commission as a futures commission merchant or as a leverage transaction merchant whose activities require such registration;

[1985, c. 643, (NEW) .]

2. **United States Securities and Exchange Commission registered broker-dealer.** A person registered with the United States Securities and Exchange Commission as a broker-dealer whose activities require such registration;

[1985, c. 643, (NEW) .]

3. **Affiliated persons.** A person affiliated with, and whose obligations and liabilities under the transaction are guaranteed by, a person referred to in subsection 1 or 2;

[1985, c. 643, (NEW) .]

4. **Member of contract market.** A person who is a member of a contract market designated by the Commodity Futures Trading Commission or any clearinghouse of the Commodity Futures Trading Commission;

[1985, c. 643, (NEW) .]

5. **Financial institution.** A financial institution; or

[1985, c. 643, (NEW) .]

6. **State-registered broker-dealer.** A person registered under the laws of this State as a securities broker-dealer whose activities require such registration.

[1985, c. 643, (NEW) .]

The exemptions provided by this section do not apply to any transaction or activity which is prohibited by the Commodity Exchange Act or Commodity Futures Trading Commission Rule. [1985, c. 643, (NEW).]

SECTION HISTORY
1985, c. 643, (NEW).

§11204. EXEMPT TRANSACTIONS

1. **Exempt transactions.** The prohibitions in section 11202 do not apply to the following:

A. An account, agreement or transaction within the exclusive jurisdiction of the Commodity Futures Trading Commission as granted under the Commodity Exchange Act; [1985, c. 643, (NEW).]

B. A commodity contract for the purchase of one or more precious metals which requires, and under which the purchaser receives, within 7 calendar days from the payment in good funds of any portion of the purchase price, physical delivery of the quantity of the precious metals purchased by such payment, provided that, for purposes of this paragraph, physical delivery shall be deemed to have occurred if, within that 7-day period, the quantity of precious metals purchased by the payment is delivered, whether in specifically segregated or fungible bulk form, into the possession of a depository, other than the seller, which is either:

(1) A financial institution;

(2) A depository, the warehouse receipts of which are recognized for delivery purposes for any commodity on a contract market designated by the Commodity Futures Trading Commission;

(3) A storage facility licensed or regulated by the United States or any agency of the United States; or

(4) A depository designated by the administrator, and such depository, or other person which qualifies as a depository, as specified in this paragraph, issues and the purchaser receives, a certificate, document of title, confirmation or other instrument evidencing that such quantity of precious metals has been delivered to the depository and is being and will continue to be held by the depository on the purchaser's behalf, free and clear of all liens and encumbrances, other than liens of the purchaser, tax liens, liens agreed to by the purchaser, or liens of the depository for fees and expenses, which have previously been disclosed to the purchaser; [1989, c. 542, §72 (AMD).]

C. A commodity contract solely between persons engaged in producing, processing, using commercially or handling as merchants, each commodity subject to such a commodity contract, or any by-product of such a contract; or [1985, c. 643, (NEW).]

D. A commodity contract under which the offeree or the purchaser is a person referred to in section 11203, an insurance company, an investment company as defined in the Investment Company Act of 1940, or an employee pension and profit sharing or benefit plan, other than a self-employed individual retirement plan or individual retirement account. [1985, c. 643, (NEW).]

[1989, c. 542, §72 (AMD) .]

2. **Rules or orders specifying exemption.** The administrator may issue rules or orders prescribing the terms and conditions of all transactions and contracts covered by this chapter which are not within the exclusive jurisdiction of the Commodity Futures Trading Commission as granted by the Commodity Exchange Act, exempting any person or transaction from any provision of this chapter conditionally or unconditionally and otherwise implementing the provisions of this chapter for the protection of purchasers and sellers of commodities.

[1989, c. 542, §73 (AMD) .]

SECTION HISTORY
1985, c. 643, (NEW). 1989, c. 542, §§72,73 (AMD).

§11205. UNLAWFUL COMMODITY ACTIVITIES

1. **Persons allowed to engage in commodity activities.** No person may engage in a trade or business or otherwise act as a commodity merchant, unless that person:

A. Is registered or temporarily licensed with the Commodity Futures Trading Commission for each activity constituting such person as a commodity merchant and such registration or temporary license shall not have expired, nor been suspended nor revoked; or [1985, c. 643, (NEW).]

B. Is exempt from that registration by virtue of the Commodity Exchange Act or of a Commodity Futures Trading Commission Rule. [1985, c. 643, (NEW).]

[1985, c. 643, (NEW) .]

2. **Board of trade allowed to trade.** No board of trade may trade, or provide a place for the trading of, any commodity contract or commodity option required to be traded on or subject to the rules of a contract market designated by the Commodity Futures Trading Commission, unless that board of trade has been so designated for that commodity contract or commodity option and that designation shall not have been vacated, nor suspended nor revoked.

[1985, c. 643, (NEW) .]

SECTION HISTORY
1985, c. 643, (NEW).

§11206. FRAUDULENT CONDUCT

No person may directly or indirectly, in or in connection with the purchase or sale of, the offer to sell, the offer to purchase, the offer to enter into or the entry into of any commodity contract or commodity option subject to section 11202; 11203; or 11204, subsection 1, paragraph B or D: [1985, c. 643, (NEW).]

1. **Cheat.** Cheat or defraud, or attempt to cheat or defraud, any other person or employ any device, scheme or artifice to defraud any other person;

[1985, c. 643, (NEW) .]

2. **False statements.** Make any false report, enter any false record, or make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading;

[1985, c. 643, (NEW) .]

3. **Fraud; deceit.** Engage in any transaction, act, practice or course of business, including, without limitation, any form of advertising or solicitation, which operates or would operate as a fraud or deceit upon any person; or

[1985, c. 643, (NEW) .]

4. **Misappropriation.** Misappropriate or convert the funds, security or property of any other person.

[1985, c. 643, (NEW) .]

SECTION HISTORY
1985, c. 643, (NEW).

§11207. LIABILITY OF PRINCIPALS, CONTROLLING PERSONS AND OTHERS

1. **Officials and agents.** The act, omission or failure of any official, agent or other person acting for any individual, association, partnership, corporation or trust within the scope of his employment or office shall be deemed the act, omission or failure of the individual, association, partnership, corporation or trust, as well as of that official, agent or other person.

[1985, c. 643, (NEW) .]

2. **Controlling persons.** Every person who directly or indirectly controls another person liable under any provision of this chapter, every partner, officer or director of such other person, every person occupying a similar status or performing similar functions, every employee of such other person who materially aids in the violation is also liable jointly and severally with and to the same extent as such other person, unless the person who is also liable by virtue of this provision sustains the burden of proof that he did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist.

[1985, c. 643, (NEW) .]

SECTION HISTORY
1985, c. 643, (NEW).

§11208. SECURITIES LAWS UNAFFECTED

Nothing in this chapter impairs, derogates or otherwise affects the authority or powers of the administrator under the Maine Uniform Securities Act or the application of any provision to that Act to any person or transaction subject to that Act. [2005, c. 65, Pt. C, §18 (AMD).]

SECTION HISTORY
1985, c. 643, (NEW). 1989, c. 542, §74 (AMD). 2005, c. 65, §C18 (AMD).

§11209. PURPOSE

This chapter may be construed and implemented to effectuate its general purpose to protect investors, to prevent and prosecute illegal and fraudulent schemes involving commodity contracts and to maximize coordination with federal and other states' laws and the administration and enforcement of those laws. This chapter is not intended to create any rights or remedies upon which actions may be brought by private persons against persons who violate the provisions of this chapter. [1985, c. 643, (NEW).]

SECTION HISTORY
1985, c. 643, (NEW).

§11210. SHORT TITLE

This chapter is known and may be cited as the "Maine Commodity Code." [2001, c. 182, §13 (NEW).]

SECTION HISTORY
2001, c. 182, §13 (NEW).

Subchapter 2: ADMINISTRATION AND ENFORCEMENT

§11301. INVESTIGATIONS

1. **Investigations.** The administrator may make investigations, within or outside this State, as the administrator finds necessary or appropriate to:

A. Determine whether any person has violated, or is about to violate, any provision of this chapter or any rule or order of the administrator; or [1989, c. 542, §75 (AMD).]

B. Aid in enforcement of this chapter. [1985, c. 643, (NEW).]

[1989, c. 542, §75 (AMD) .]

2. **Publication.** The administrator may publish information concerning any violation of this chapter or any rule or order of the administrator.

[1989, c. 542, §75 (AMD) .]

3. **Power of administrator.** For purposes of any investigation or proceeding under this chapter, the administrator or any officer or employee designated by rule or order, may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which the administrator deems to be relevant or material to the inquiry.

[1989, c. 542, §75 (AMD) .]

4. **Court order.** If a person does not give testimony or produce the documents required by the administrator or a designated employee pursuant to an administrative subpoena, the administrator or designated employee may apply for a court order compelling compliance with the subpoena or the giving of the required testimony.

The request for order of compliance may be addressed to either:

A. The Superior Court located in the County of Kennebec or the Superior Court where service may be obtained on the person refusing to testify or produce, if the person is within this State; or [1985, c. 643, (NEW).]

B. The appropriate court of the state having jurisdiction over the person refusing to testify or produce, if the person is outside this State. [1985, c. 643, (NEW).]

[1989, c. 542, §75 (AMD) .]

SECTION HISTORY
1985, c. 643, (NEW). 1989, c. 542, §75 (AMD).

§11302. ENFORCEMENT OF CHAPTER

1. **Cease and desist order.** If the administrator believes, whether or not based upon an investigation conducted under section 11301, that any person has engaged or is about to engage in any act or practice constituting a violation of any rule or order under this chapter, the administrator may:

A. Issue a cease and desist order; or [1985, c. 643, (NEW).]

B. Initiate any of the actions specified in subsection 2. [1985, c. 643, (NEW).]

[1989, c. 542, §76 (AMD) .]

2. **Court action.** The administrator may institute any of the following actions in the appropriate courts of this State, or in the appropriate courts of another state, in addition to any legal or equitable remedies otherwise available:

A. An action for declaratory judgment; [1985, c. 643, (NEW).]

B. An action for a prohibitory or mandatory injunction to enjoin the violation and to ensure compliance with this chapter or any rule or order of the administrator; [1989, c. 542, §76 (AMD).]

C. An action for disgorgement; or [1985, c. 643, (NEW).]

D. An action for appointment of a receiver or conservator for the defendant or the defendant's assets. [1985, c. 643, (NEW).]

[1989, c. 542, §76 (AMD) .]

SECTION HISTORY
1985, c. 643, (NEW). 1989, c. 542, §76 (AMD).

§11303. POWER OF COURT TO GRANT RELIEF

1. **Violation of chapter.** Upon showing of violation of this chapter or a rule or order of the administrator, the court, in addition to traditional legal and equitable remedies, including temporary restraining orders and permanent or temporary prohibitory or mandatory injunctions, may grant one or more of the following special remedies:

A. Imposition of a civil penalty in an amount which may not exceed $10,000 for any single violation; [1985, c. 643, (NEW).]

B. Disgorgement; [1985, c. 643, (NEW).]

C. Declaratory judgment; [1985, c. 643, (NEW).]

D. Restitution to investors wishing restitution; or [1985, c. 643, (NEW).]

E. Appointment of a receiver or conservator for the defendant or the defendant's assets. [1985, c. 643, (NEW).]

[1989, c. 542, §77 (AMD) .]

2. **Violation about to occur.** Upon a showing by the administrator that a person is about to violate any provision of this chapter or any rule or order of the administrator, the court may grant one or more of the following remedies:

A. A temporary restraining order; [1985, c. 643, (NEW).]

B. A temporary or permanent injunction; or [1985, c. 643, (NEW).]

C. An order appointing a receiver or conservator for the defendant or the defendant's assets. [1985, c. 643, (NEW).]

[1989, c. 542, §77 (AMD) .]

3. **No bond required.** The court shall not require the administrator to post a bond in any official action under this chapter.

[1989, c. 542, §77 (AMD) .]

4. **Violation of foreign state law.** Upon showing by the administrator of securities or commodity agency of another state that a person has violated the securities or commodity act of the foreign state or a rule or order of the administrator or securities or commodity agency of the foreign state, the court, in addition to traditional legal or equitable remedies including temporary restraining orders, and permanent or temporary prohibitory or mandatory injunctions, may grant the following special remedies:

A. Disgorgement; or [1985, c. 643, (NEW).]

B. Appointment of a receiver, conservator or ancillary receiver or conservator for the defendant or the defendant's assets located in this State. [1985, c. 643, (NEW).]

[1985, c. 643, (NEW) .]

5. **Violation of foreign law about to occur.** Upon showing by the administrator or securities or commodity agency of another state that a person is about to violate the securities or commodity act of the foreign state or a rule or order of the administrator or securities or commodity agency of the foreign state, the court may only grant:

A. A temporary restraining order; [1985, c. 643, (NEW).]

B. A temporary or permanent injunction; or [1985, c. 643, (NEW).]

C. An order appointing a receiver, conservator or ancillary receiver or conservator for the defendant or the defendant's assets located in this State. [1985, c. 643, (NEW).]

[1985, c. 643, (NEW) .]

SECTION HISTORY
1985, c. 643, (NEW). 1989, c. 542, §77 (AMD).

§11304. CRIMINAL PENALTIES

1. **Knowing violation.** Any person who knowingly violates any provision of this chapter or any rule or order of the administrator under this chapter shall be guilty of a Class C crime, provided that, notwithstanding Title 17-A, section 1301, the maximum fine shall be $10,000 or any higher amount which does not exceed twice the pecuniary gain derived from the crime by the defendant.

[1989, c. 542, §78 (AMD) .]

2. **Prosecution.** The administrator may refer such evidence as is available concerning violations of this chapter or any rule or order of the administrator to the Attorney General or the proper district attorney, who may, with or without such a reference from the administrator, institute the appropriate criminal proceedings under this chapter.

[1989, c. 542, §78 (AMD) .]

SECTION HISTORY
1985, c. 643, (NEW). 1989, c. 542, §78 (AMD).

§11305. ADMINISTRATION OF CHAPTER

1. **Administrator.** This chapter shall be administered by the Securities Administrator.

[1989, c. 542, §79 (AMD) .]

2. **Use of information.** Neither the administrator nor any employee of the administrator may use any information which is filed with or obtained by the administrator which is not public information for personal gain or benefit, nor may the administrator nor any employee of the administrator conduct any securities or commodity dealings whatsoever based upon any such information, even though public, if there has not been a sufficient period of time for the securities or commodity markets to assimilate that information.

[1989, c. 542, §79 (AMD) .]

3. **Public information.** Notwithstanding any other provision of law, except as provided in paragraph A, all information collected, assembled or maintained by the administrator is public information and is available for the examination of the public.

A. The following are exceptions to this subsection:

(1) Information obtained in private investigations pursuant to section 11301;

(2) Information made confidential by rule or order of the administrator; or

(3) Information obtained from federal agencies which may not be disclosed under federal law.
[1989, c. 542, §79 (AMD).]

[1989, c. 542, §79 (AMD) .]

4. **Disclosure of information.** The administrator may disclose any information made confidential under subsection 3, paragraph A, subparagraph (1), to persons identified in section 11306, subsection 1.

[1989, c. 542, §79 (AMD) .]

5. **Privilege.** No provision of this chapter creates or derogates any privilege which exists at common law, by statute or otherwise, when any documentary or other evidence is sought under subpoena directed to the administrator or any employee of the administrator.

[1989, c. 542, §79 (AMD) .]

SECTION HISTORY
1985, c. 643, (NEW). 1989, c. 542, §79 (AMD).

§11306. COOPERATION WITH OTHER AGENCIES

1. **Cooperation.** To encourage uniform application and interpretation of this chapter and commodities regulation and enforcement in general, the administrator and the employees of the administrator may cooperate, including bearing the expense of the cooperation, with the securities agencies or administrator of another jurisdiction, Canadian province or territory or such other agencies administering this chapter, the Commodity Futures Trading Commission, the Securities and Exchange Commission, any self-regulatory organization established under the Commodity Exchange Act or the Securities Exchange Act of 1934, any national or international organization of commodities or securities officials or agencies and any governmental law enforcement agency.

[1989, c. 542, §80 (AMD) .]

2. **Type of cooperation.** The cooperation authorized by subsection 1 includes, but is not limited to, the following:

A. Making joint examinations or investigations; [1985, c. 643, (NEW).]

B. Holding joint administrative hearings; [1985, c. 643, (NEW).]

C. Filing and prosecuting joint litigation; [1985, c. 643, (NEW).]

D. Sharing and exchanging personnel; [1985, c. 643, (NEW).]

E. Sharing and exchanging information and documents; [1985, c. 643, (NEW).]

F. Formulating and adopting mutual regulations, statements of policy, guidelines, proposed statutory changes and releases; and [1985, c. 643, (NEW).]

G. Issuing and enforcing subpoenas at the request of the agency administering this chapter in another jurisdiction, the securities agency of another jurisdiction, the Commodity Futures Trading Commission or the Securities and Exchange Commission if the information sought would also be subject to lawful subpoena for conduct occurring in this State. [1985, c. 643, (NEW).]

[1985, c. 643, (NEW) .]

SECTION HISTORY
1985, c. 643, (NEW). 1989, c. 542, §80 (AMD).

§11307. GENERAL AUTHORITY TO ADOPT RULES, FORMS AND ORDERS

1. **Rules; forms; orders.** In addition to specific authority granted elsewhere in this chapter, the administrator may make, amend and rescind rules, forms and offers as are necessary to carry out this chapter. These rules or forms shall include, but need not be limited to, the following:

A. Rules defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with this chapter. For the purpose of rules or forms, the administrator may classify commodities and commodity contracts, persons and matters within the administrator's jurisdiction. [1989, c. 542, §81 (AMD).]

[1989, c. 542, §81 (AMD) .]

2. **Adoption of rules; forms; orders.** Unless specifically provided in this chapter, no rule, form or order may be adopted, amended or rescinded unless the administrator finds that the action is:

A. Necessary or appropriate in the public interest or for the protection of investors; and [1985, c. 643, (NEW).]

B. Consistent with the purposes fairly intended by the policy and provisions of this chapter. [1985, c. 643, (NEW).]

[1989, c. 542, §81 (AMD) .]

3. **Publication.** All rules and forms of the administrator shall be published.

[1989, c. 542, §81 (AMD) .]

4. **Liability.** No provision of this chapter imposing any liability applies to any act done or omitted in good faith in conformity with a rule, order or form adopted by the administrator, notwithstanding that the rule, order or form may later be amended or rescinded, or be determined by judicial or other authority to be invalid for any reason.

[1989, c. 542, §81 (AMD) .]

SECTION HISTORY
1985, c. 643, (NEW). 1989, c. 542, §81 (AMD).

§11308. CONSENT TO SERVICE OF PROCESS

1. **Appointment of administrator.** When a person, including a nonresident of this State, engages in conduct prohibited or made actionable by the chapter or any rule or order of the administrator, the engaging in the conduct shall constitute the appointment of the administrator as the person's attorney to receive service of any lawful process in a noncriminal proceeding against the person, a successor or personal representative, which grows out of that conduct and which is brought under the chapter or any rule or order of the administrator with the same force and validity as if served personally.

[1989, c. 542, §82 (AMD) .]

2. **Service.** Service under subsection 1 may be made by leaving a copy of the process in the office of the administrator, but it is not effective unless:

A. The plaintiff, who may be the administrator in a suit, action or proceeding instituted by the administrator, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at the last address known to the plaintiff; and [1989, c. 542, §82 (AMD).]

B. The plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows. [1985, c. 643, (NEW).]

[1989, c. 542, §82 (AMD) .]

SECTION HISTORY
1985, c. 643, (NEW). 1989, c. 542, §82 (AMD).

§11309. SCOPE OF CHAPTER

1. **Seller.** Sections 11202, 11205 and 11206 apply to persons who sell or offer to sell when:

A. An offer to sell is made in this State; or [1985, c. 643, (NEW).]

B. An offer to buy is made and accepted in this State. [1985, c. 643, (NEW).]

[1985, c. 643, (NEW) .]

2. **Purchaser.** Sections 11202, 11205 and 11206 apply to persons who buy or offer to buy when:

A. An offer to buy is made in this State; or [1985, c. 643, (NEW).]

B. An offer to sell is made and accepted in this State. [1985, c. 643, (NEW).]

[1985, c. 643, (NEW) .]

3. **Offer in this State.** For the purpose of this section, an offer to sell or to buy is made in this State, whether or not either party is then present in this State, when the offer:

A. Originates from this State; or [1985, c. 643, (NEW).]

B. Is directed by the offeror to this State and received at the place to which it is directed, or at any post office in this State in the case of a mailed offer. [1985, c. 643, (NEW).]

[1985, c. 643, (NEW) .]

4. **Acceptance in this State.** For the purpose of this section, an offer to buy or to sell is accepted in this State when acceptance:

A. Is communicated to the offeror in this State; and [1985, c. 643, (NEW).]

B. Has not previously been communicated to the offeror, whether or not either party is then present in this State, when the offeree directs it to the offeror in this State reasonably believing the offeror to be in this State and it is received at the place to which it is directed, or at any post office in this State in the case of a mailed acceptance. [1985, c. 643, (NEW).]

[1985, c. 643, (NEW) .]

5. **Newspapers and other publications.** For the purpose of this section, an offer to sell or to buy is not made in this State when the publisher circulates or there is circulated on his behalf in this State any bona fide newspaper or other publication of general, regular and paid circulation:

A. Which is not published in this State; or [1985, c. 643, (NEW).]

B. Which is published in this State, but has had more than 2/3 of its circulation outside this State during the past 12 months. [1985, c. 643, (NEW).]

For the purpose of this subsection, when a publication is published in editions, each edition shall be considered a separate publication except for material common to all editions.

[1985, c. 643, (NEW) .]

6. **Electronic communications.** For the purpose of this section, an offer to sell or to buy is not made in this State when a radio or television program or other electronic communication originating outside this State is received in this State.

For the purpose of this subsection, a radio or television program or other electronic communication shall be considered having originated from this State if either the broadcast studio or means of transmission is located within this State, unless:

A. The program or communication is syndicated and distributed from outside this State for redistribution to the general public in this State; [1985, c. 643, (NEW).]

B. The program or communication is supplied by a radio, television or other electronic network with the electronic signal originating from outside this State for redistribution to the general public in this State; [1985, c. 643, (NEW).]

C. The program or communication is an electronic signal that originates outside this State and is captured for redistribution to the general public in this State by a community antenna or cable, radio, television or other electronic system; or [1985, c. 643, (NEW).]

D. The program or communication consists of an electronic signal which originates from within this State, but which is not intended for redistribution to the general public in this State. [1985, c. 643, (NEW).]

This subsection does not apply to any changes, alterations or additions made locally to a radio or television program or other electronic communications.

[1985, c. 643, (NEW) .]

SECTION HISTORY
1985, c. 643, (NEW).

§11310. PROCEDURE FOR ENTRY OF AN ORDER

1. **Notice of intent, summary order.** The administrator shall commence an administrative proceeding under this chapter, by entering either a notice of intent to do a contemplated act or a summary order. The notice of intent or summary order may be entered without notice, without opportunity for hearing and need not be supported by findings of fact or conclusions of law, but must be in writing.

[1989, c. 542, §83 (AMD) .]

2. **Notification of parties.** Upon entry of a notice of intent or summary order, the administrator shall promptly notify, in writing, all interested parties that the notice or summary order has been entered and the reasons for that notice or order. If the proceeding is pursuant to a notice of intent, the administrator shall notify all interested parties of the date, time and place set for the hearing in the notice or, if no hearing has been scheduled, the administrator shall notify all interested parties that they have 30 calendar days from the entry of the notice of intent to file a written request with the administrator for a hearing. If the proceeding is pursuant to a summary order, the administrator shall notify all interested parties that they have 30 calendar days from the entry of the order to file a written request for a hearing on the matter with the administrator and that the hearing will be scheduled to commence within 15 calendar days after the receipt of the written request.

Notwithstanding anything in this subsection, the administrator may give notice of the entry of the notice of intent or summary order to such parties as the administrator may determine to be necessary or appropriate.

[1989, c. 542, §83 (AMD) .]

3. **Hearing.** If the proceeding is pursuant to a summary order, the administrator, whether or not a written request for a hearing is received from any interested party, may set the matter down for hearing on the administrator's own motion.

[1989, c. 542, §83 (AMD) .]

4. **Summary order final.** A summary order issued against any person becomes a final order:

A. Thirty days after the administrator mails notice to the interested parties of the right to request a hearing if they fail to request a hearing and none is scheduled by the administrator; or [1989, c. 542, §83 (AMD).]

B. On the date of the hearing, if the person requesting the hearing fails to appear. [1985, c. 643, (NEW).]

[1989, c. 542, §83 (AMD) .]

5. **Action pending final determination.** If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination.

[1989, c. 542, §83 (AMD) .]

6. **Final order.** No final order or order after hearing may be returned without:

A. Appropriate notice to all interested persons; [1985, c. 643, (NEW).]

B. Opportunity for hearing by all interested persons; and [1985, c. 643, (NEW).]

C. Entry of written findings of fact and conclusions of law. [1985, c. 643, (NEW).]

[1985, c. 643, (NEW) .]

SECTION HISTORY
1985, c. 643, (NEW). 1989, c. 542, §83 (AMD).

§11311. JUDICIAL REVIEW OF ORDERS

Any person aggrieved by a final order of the administrator may obtain review of the order in the Kennebec County Superior Court by filing a petition in accordance with Title 5, section 11001, and the Maine Rules of Civil Procedure, Rule 80C. [1989, c. 542, §84 (AMD).]

SECTION HISTORY
1985, c. 643, (NEW). 1989, c. 542, §84 (AMD).

§11312. BURDEN OF PROOF

The burden of proof for an exemption from this chapter shall be upon the person claiming that exemption. [1989, c. 542, §85 (NEW); 1989, c. 878, Pt. A, §97 (RPR).]

SECTION HISTORY
1985, c. 643, (NEW). 1989, c. 542, §85 (NEW). 1989, c. 878, §A97 (RPR).

§11313. ORDERS ISSUED BY SUPERINTENDENT OF FINANCIAL INSTITUTIONS

All orders issued by the Superintendent of Financial Institutions at a time when authority for administering this chapter was vested in the Superintendent of Financial Institutions shall remain in effect for as long as they would have remained in effect if that authority had not been transferred to the Securities Administrator. [1989, c. 878, Pt. A, §98 (NEW); 2001, c. 44, §11 (AMD); 2001, c. 44, §14 (AFF).]

SECTION HISTORY
1989, c. 878, §A98 (NEW). 2001, c. 44, §11 (AMD). 2001, c. 44, §14 (AFF).

Chapter 113: PRACTICE OF PUBLIC ACCOUNTANCY

Subchapter 1: GENERAL PROVISIONS HEADING: PL 1987, C. 489, §2 (NEW)

§12201. DEFINITIONS

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings. [1997, c. 265, §1 (AMD).]

1. **Board.** "Board" means the Board of Accountancy established under Title 5, section 12004-A, subsection 1, or its predecessor under prior law.

[1989, c. 503, Pt. B, §153 (AMD) .]

2. **Certificate.** "Certificate" means a certificate as "certified public accountant" issued under prior law, and a certificate as "public accountant" issued under prior law, or a corresponding certificate as a certified public accountant issued after examination under the law of any other state.

[2009, c. 242, §1 (AMD) .]

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

[1987, c. 489, §2 (NEW) .]

3-A. **Defined service.** For purposes of section 12275, subsections 12 and 13, "defined service" means providing the following services:

A. Any audit or other engagement to be performed in accordance with the Statements on Auditing Standards, SAS; [1999, c. 245, §1 (NEW).]

B. Any review of a financial statement or compilation of a financial statement to be performed in accordance with the Statement on Standards for Accounting and Review Services, SSARS; [2007, c. 384, §1 (AMD).]

C. Any examination of prospective financial information to be performed in accordance with the Statement on Standards for Attestation Engagements, SSAE; [2007, c. 384, §1 (AMD).]

D. Any engagement to be performed in accordance with the auditing standards of the Public Company Accounting Oversight Board, established in 15 United States Code, Section 7211 (2007); or [2007, c. 384, §1 (NEW).]

E. Any compilation of a financial statement to be performed in accordance with the Statement on Standards for Accounting and Review Services, SSARS. [2007, c. 384, §1 (NEW).]

The statements on standards specified in this definition are those developed for general application by recognized national accountancy organizations.

[2007, c. 384, §1 (AMD) .]

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

[1987, c. 489, §2 (NEW) .]

5. **Firm.** "Firm" means a sole proprietorship, a corporation, a partnership or any other form of organization.

[1995, c. 34, §1 (AMD) .]

6. **Licensee.** "Licensee" means a person who holds a license issued by the board under section 12230 or 12231 or a corresponding provision of prior law, or a firm that holds a license issued by the board under section 12252.

[2009, c. 242, §2 (AMD) .]

6-A. **Peer review.** "Peer review" means a study, appraisal or review of one or more aspects of the professional work of a certified public accountancy firm that provides a defined service by a person or persons who are licensed as certified public accountants and who are not affiliated with the certified public accountancy firm being reviewed.

[1999, c. 619, §1 (NEW) .]

7. **Permit.**

[2007, c. 402, Pt. Z, §2 (RP) .]

8. **Practice of or practicing public accountancy.** "Practice of or practicing public accountancy" means the following combined activities by a person or firm:

A. Representing to the public that he or it is a licensee; and [1987, c. 489, §2 (NEW).]

B. Performing or offering to perform, for a client or potential client, services involving the use of accounting or auditing skills. [1987, c. 489, §2 (NEW).]

Accounting or auditing skills include the issuance of reports on financial statements, management advisory or consulting services, the preparation of tax returns and the furnishing of advice on tax matters.

[1987, c. 489, §2 (NEW) .]

9. **Quality review.** "Quality Review" means a study, appraisal or review of one or more aspects of the professional work of a person or firm in the practice of public accountancy, by a person or persons who hold certificates and who are not affiliated with the person or firm being reviewed.

[1987, c. 489, §2 (NEW) .]

10. **Report on financial statements.** "Report on financial statements" means any form of language that:

A. States or implies assurance as to the reliability of any financial statements; and [1987, c. 489, §2 (NEW).]

B. States or implies that an audit, review or compilation has been performed. [1987, c. 489, §2 (NEW).]

Report on financial statements includes disclaimers of opinions when the disclaimer implies positive assurance as to the reliability of the financial statements. Language that meets this definition includes language asserting or implying that the person has given an opinion upon financial statements or has reviewed or made a compilation of financial statements in accordance with the appropriate standards promulgated by the American Institute of Certified Public Accountants or its successor or other organization approved by the board as adopted by the board by rule or that the person has the capabilities to comply with those standards.

[2007, c. 402, Pt. Z, §3 (AMD) .]

11. **Rule.** "Rule" means any rule or other written directive of general application duly adopted by the board.

[1987, c. 489, §2 (NEW) .]

12. **Substantial equivalency.** "Substantial equivalency" means that the education, examination and experience requirements for certified public accountants contained in the statutes and administrative rules of another jurisdiction are comparable to or exceed the education, examination and experience requirements of this State or that an individual certified public accountant's education, examination and experience qualifications are comparable to or exceed the education, examination and experience requirements of this State.

[2007, c. 384, §2 (AMD) .]

SECTION HISTORY
1987, c. 489, §2 (NEW). 1989, c. 503, §B153 (AMD). 1995, c. 34, §1 (AMD). 1997, c. 265, §1 (AMD). 1999, c. 245, §§1,2 (AMD). 1999, c. 619, §1 (AMD). 2007, c. 384, §§1, 2 (AMD). 2007, c. 402, Pt. Z, §§1-3 (AMD). 2009, c. 242, §§1, 2 (AMD).

§12202. UNLICENSED PERSONS OR FIRMS

Anyone may practice accounting and engage in services which involve accounting or auditing skills, including management advisory or consulting services, the preparation of tax returns and the furnishing of advice on tax matters, provided that no one except a licensee may: [1987, c. 489, §2 (NEW).]

1. Represent or appear to represent that he is a licensee as defined in section 12201, subsection 6; or

[1987, c. 489, §2 (NEW) .]

2. Issue a report on financial statements as defined in section 12201, subsection 10, except those persons described in section 12275, subsection 1, paragraphs A and B.

[1987, c. 489, §2 (NEW) .]

SECTION HISTORY
1987, c. 489, §2 (NEW).

§12203. FEES

The Director of the Office of Professional and Occupational Regulation may establish by rule fees for purposes authorized under this chapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for any one purpose may not exceed $100. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [2007, c. 402, Pt. Z, §4 (NEW); 2011, c. 286, Pt. B, §5 (REV).]

SECTION HISTORY
2007, c. 402, Pt. Z, §4 (NEW). 2011, c. 286, Pt. B, §5 (REV).

Subchapter 2: BOARD OF ACCOUNTANCY
HEADING: PL 1987, C. 489, §2 (NEW)

§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. Four members must be holders of licenses issued under section 12230 or 12231 or a corresponding provision of prior law and must have had, as their principal occupation, active practice as certified public accountants 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.
[2009, c. 242, §3 (AMD).]

SECTION HISTORY
1987, c. 489, §2 (NEW). 1989, c. 483, §A52 (AMD). 1989, c. 503, §B154 (AMD). 1989, c. 878, §A99 (RPR). 1993, c. 600, §A264 (AMD). 2007, c. 402, Pt. Z, §5 (AMD). 2007, c. 621, §11 (AMD). 2009, c. 242, §3 (AMD).

§12214. ORGANIZATION; POWERS AND DUTIES

1. **Meetings; chair.** The board shall meet at least once a year to conduct its business and to elect a chair, who must be a certified public accountant. 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.

[2013, c. 246, Pt. B, §21 (AMD) .]

2. **Compensation.**

[1995, c. 397, §102 (RP) .]

3. **Receipts and expenses.**

[1995, c. 397, §102 (RP) .]

4. **Rules.** The board may, in accordance with procedures established by the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter II, adopt such rules as may be reasonably necessary for the proper performance of its duties and the administration of this chapter, including, but not limited to rules of professional conduct appropriate to establish and to maintain a high standard of integrity and of dignity in the profession of public accountancy and regulations prescribing requirements of continuing education.

[1987, c. 489, §2 (NEW) .]

5. **Employees.**

[1995, c. 397, §102 (RP) .]

6. **Register.**

[2007, c. 402, Pt. Z, §7 (RP) .]

7. **Hearings.**

[2007, c. 402, Pt. Z, §8 (RP) .]

8. **Contracts.**

[1995, c. 397, §102 (RP) .]

9. **Fees.**

[2007, c. 402, Pt. Z, §9 (RP) .]

10. **Budget.**

[1995, c. 397, §102 (RP) .]

11. **Reports.**

[2007, c. 402, Pt. Z, §10 (RP) .]

SECTION HISTORY
1987, c. 489, §2 (NEW). 1989, c. 483, §A53 (AMD). 1995, c. 397, §102 (AMD). 1995, c. 502, §H42 (AMD). 2007, c. 402, Pt. Z, §§6-10 (AMD). 2013, c. 246, Pt. B, §21 (AMD).

Subchapter 3: LICENSURE OF CERTIFIED PUBLIC ACCOUNTANTS
HEADING: PL 1987, C. 489, §2 (NEW); PL 2009, C. 242, §38 (AMD)

§12227. LICENSES; CERTIFIED PUBLIC ACCOUNTANTS

Any person who receives from the board a license to practice as a certified public accountant prior to the effective date of this chapter or as provided in this subchapter may be styled and known as a certified public accountant, and no other persons may assume that title or use the abbreviation "CPA" or any other words, letters or figures to indicate that the person using the title is a certified public accountant. [2009, c. 242, §4 (AMD).]

SECTION HISTORY
1987, c. 489, §2 (NEW). 2009, c. 242, §4 (AMD).

§12228. CERTIFIED PUBLIC ACCOUNTANTS; QUALIFICATIONS

1. **Certificate grant.**

[2009, c. 242, §5 (RP) .]

1-A. **Qualifications for licensure.** A person who meets the good character, education, examination and experience requirements of this section is eligible to apply for licensure as a certified public accountant pursuant to section 12230.

[2009, c. 242, §6 (NEW) .]

2. **Good character.** "Good character" for the purposes of this section means lack of a history of dishonest or felonious acts. The board may refuse to grant a certificate on the ground of failure to satisfy this requirement only if there is a substantial connection between the lack of good character of the applicant and the professional responsibilities of a licensee and if the finding by the board of lack of good character is supported by clear and convincing evidence. When an applicant is found to be unqualified for a certificate because of a lack of good character, the board shall furnish the applicant a statement containing the findings of the board, a complete record of the evidence upon which the determination was based and a notice of the applicant's right of appeal under the Maine Administrative Procedure Act, Title 5, chapter 375.

[2007, c. 695, Pt. A, §37 (RPR) .]

3. **Education requirement.** The education requirement for a license is as follows:

B. At least 150 semester hours of education, including a minimum 4-year baccalaureate or higher degree conferred by a college or university acceptable to the board, the total educational program to include basic courses in accounting and auditing determined to be appropriate under board rules. Rules adopted by the board pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A; and [2007, c. 695, Pt. A, §37 (RPR).]

C. An examination applicant who has successfully completed the basic courses in accounting and auditing required by paragraph B and who expects to complete a minimum 4-year baccalaureate or higher degree required in paragraph B within 120 days following the examination is eligible to take the examination. Grades may not be released, nor may credit for the examination or any part of the examination be given to the applicant unless the degree required in paragraph B is completed within 120 days following the examination or within such time as the board in its sole discretion may determine. [2011, c. 478, §1 (AMD).]

[2011, c. 478, §1 (AMD) .]

4. **Examination.** An applicant is required to pass an examination approved by the board to test the applicant's knowledge of the subjects of accounting and auditing and such other related subjects as the board may specify by rule in order to qualify for a certificate. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. The board may make the use of all or any part of the Uniform Certified Public Accountant Examination and the Advisory Grading Service of the American Institute of Certified Public Accountants or any other examination approved by the board and may contract with 3rd parties to perform such administrative services with respect to the examination as it considers appropriate to assist it in performing its duties under this section.

[2007, c. 695, Pt. A, §37 (RPR) .]

6. **Examination; credits.** An applicant must be given credit for any and all parts of an examination passed in another state if that credit would have been given, under then applicable requirements, if the applicant had taken the examination in this State.

[2007, c. 695, Pt. A, §37 (RPR) .]

7. **Waiver.** The board may, in particular cases, waive or defer any of the requirements of subsection 6 regarding the circumstances in which the various sections of the examination must be passed upon a showing that, by reason of circumstances beyond the applicant's control, the applicant was unable to meet that requirement.

[2007, c. 695, Pt. A, §37 (RPR) .]

8. **Administration fee.**

[2007, c. 402, Pt. Z, §11 (RP) .]

9. **Out-of-state examination.** An applicant who has been given credit for any or all parts of an examination passed in another state as provided in subsection 6 must pay the fee as set under section 12203.

[2007, c. 695, Pt. A, §37 (RPR) .]

10. **Experience.** For initial issuance of a license under section 12230, an applicant must demonstrate 2 years of experience under the direction of a certified public accountant licensed by any state or territory of the United States or equivalent direction, as determined by the board, by a licensed professional in another country and must meet the other requirements prescribed by the board by rule. The applicant's experience must include the use of accounting or auditing skills, including the issuance of reports on financial statements, and at least one of the following: the provision of management advisory, financial advisory or consulting

services; the preparation of tax returns; the furnishing of advice on tax matters; or equivalent activities defined by the board by rule. Board rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. To the extent the applicant's experience is as a revenue agent or in a similar position engaged in the examination of personal and corporate income tax returns for the Bureau of Revenue Services, the applicant receives credit at the rate of 50% toward the experience required by this subsection. To the extent the applicant's experience is as an examiner engaged in financial examinations for the Bureau of Insurance, the applicant receives credit under this subsection if that experience meets the following standards:

A. Examinations are performed in conformity with the Examiners' Handbook published by the National Association of Insurance Commissioners or its successor or other organization approved by the board; [2007, c. 695, Pt. A, §37 (RPR).]

B. Working papers prepared by the examiners are in conformity with generally accepted auditing standards and are subject to a review by a supervisor who must be a certified public accountant; [2007, c. 695, Pt. A, §37 (RPR).]

C. Written reports of examination are prepared in conformity with the Examiners' Handbook published by the National Association of Insurance Commissioners or its successor or other organization approved by the board. All examiners working on the examinations must participate in the preparation of the report; [2007, c. 695, Pt. A, §37 (RPR).]

D. Reports of examination are prepared in accordance with statutory accounting principles. All examiners working on the examinations must participate in the preparation of the financial statements and corresponding note disclosures; and [2007, c. 695, Pt. A, §37 (RPR).]

E. All examiners assigned to an examination must participate in the planning of the examination and the planning phase conforms to the Examiners' Handbook published by the National Association of Insurance Commissioners or its successor or other organization approved by the board and generally accepted auditing standards. [2007, c. 695, Pt. A, §37 (RPR).]

[2009, c. 242, §8 (AMD) .]

11. **Board discretion.** The members of the board have the full and sole responsibility for the determination of the qualifications of applicants for the license of "certified public accountant." Only persons recommended by the board may be granted the license of "certified public accountant."

[2009, c. 242, §9 (AMD) .]

12. **Substantial equivalency.**

[2007, c. 384, §5 (RP) .]

13. **Foreign designation.**

[2007, c. 384, §6 (RP) .]

14. **Action by foreign jurisdiction.**

[2007, c. 384, §7 (RP) .]

15. **Authority.**

[2007, c. 384, §8 (RP) .]

SECTION HISTORY

1987, c. 489, §2 (NEW). 1989, c. 450, §49 (AMD). 1993, c. 634, §C1 (AMD). 1995, c. 353, §§23,24 (AMD). 1997, c. 265, §§2-6 (AMD). 1997, c. 526, §14 (AMD). 1999, c. 224, §1 (AMD). 1999, c. 245, §§3-5 (AMD). RR 2003, c. 1, §33 (COR). 2003, c. 204, §§E1-3 (AMD). 2003, c. 688, §C21 (AMD). 2003, c. 688, Pt. A, §53 (AMD). 2005, c. 347, §§D1-3 (AMD). 2007, c. 384, §§3-8 (AMD). 2007, c. 402, Pt. Z, §11 (AMD). 2007, c. 695, Pt. A, §37 (RPR). 2009, c. 242, §§5-9 (AMD). 2011, c. 478, §1 (AMD).

§12229. LICENSEES OFFERING OR RENDERING SERVICES IN ANOTHER STATE

(REPEALED)

SECTION HISTORY
1999, c. 245, §6 (NEW). 2007, c. 402, Pt. Z, §12 (AMD). 2009, c. 242, §10 (RP).

§12230. APPLICATION FOR LICENSURE

1. **Licensure.** The board shall issue a license as a certified public accountant to a person who submits the application required by the board, pays the fee as set under section 12203 and meets the qualifications set forth in section 12228.

[2009, c. 242, §11 (NEW) .]

2. **Timeliness of application.** A person who applies for an initial license more than 4 years after the person met the qualifications for licensure set forth in section 12228 must demonstrate completion of 40 hours of continuing professional education that meets the requirements of section 12333 during the year preceding application.

[2009, c. 242, §11 (NEW) .]

SECTION HISTORY
2009, c. 242, §11 (NEW).

§12231. APPLICATION FOR LICENSURE ON THE BASIS OF AN OUT-OF-STATE LICENSE OR CERTIFICATE

1. **Substantial equivalency.** The holder of a license or certificate issued by another state who establishes that holder's principal place of business in this State shall request the issuance of a license from the board prior to establishing such principal place of business. The board shall issue a license to a person who obtains from a national association of state boards of accountancy verification that the individual’s certified public accountancy qualifications are substantially equivalent to the certified public accountant licensure requirements of the American Institute of Certified Public Accountants, National Association of State Boards of Accountancy Uniform Accountancy Act.

[2009, c. 242, §12 (NEW) .]

2. **Nonsubstantial equivalency.** For applicants who cannot meet the substantial equivalency requirements of subsection 1, the board shall issue a license to an applicant who holds a certificate or license as a certified public accountant issued by another state and who submits the application required by the board, pays the fee as set under section 12203 and meets the following requirements:

A. The applicant meets all current requirements in this State for issuance of a license at the time the application is made; [2009, c. 242, §12 (NEW).]

B. At the time of the issuance of the applicant's certificate in the other state, the applicant met all the requirements then applicable in this State; [2009, c. 242, §12 (NEW).]

C. The applicant was eligible to take and passed the examination required for issuance of the certificate with grades that would have been passing grades at the time in this State; and [2009, c. 242, §12 (NEW).]

D. If the applicant is applying for a first-time license more than 4 years after the person obtained a certificate in the other state, the applicant:

(1) Completed 40 hours of continuing professional education that meets the requirements of section 12233 during the 12 months preceding application; or

(2) Has 4 years of experience in the practice of public accountancy, or its equivalent, that meets requirements prescribed by the board by rule after passing the examination upon which the certificate is based and within the 10 years preceding the submission of the application. [2009, c. 242, §12 (NEW).]

[2009, c. 242, §12 (NEW) .]

SECTION HISTORY
2009, c. 242, §12 (NEW).

§12232. PRACTICE WITHOUT LICENSE ON THE BASIS OF SUBSTANTIAL EQUIVALENCY

1. **Substantial equivalency.** An individual whose principal place of business is outside the State is presumed to have qualifications substantially equivalent to the State's requirements and has all the privileges of licensees of the State and may provide professional services in the State without the requirement to obtain a license under this section or to otherwise notify or register with the board or pay any fee if the individual:

A. Holds a valid license as a certified public accountant from a state that the board has verified to be in substantial equivalence with the certified public accountant licensure requirements of a national association of state boards of accountancy and standards promulgated by the American Institute of Certified Public Accountants; or [2009, c. 242, §13 (NEW).]

B. Holds a valid license as a certified public accountant from a state that is not in substantial equivalence with the certified public accountant licensure requirements under paragraph A, but the board determines that the individual's certified public accountant qualifications are substantially equivalent to the certified public accountant licensure requirements of a national association of state boards of accountancy and standards promulgated by the American Institute of Certified Public Accountants. For purposes of this subsection, the board may exempt an individual who passed the Uniform Certified Public Accountant Examination and holds a valid license issued by any other state prior to January 1, 2012 from the education requirement in section 12228, subsection 3, paragraph B. [2009, c. 242, §13 (NEW).]

In determining substantial equivalence, the board may consult determinations and verifications from a national qualification appraisal service of a national association of state boards of accountancy.

[2009, c. 242, §13 (NEW) .]

2. **No notice or other submission required.** Notwithstanding any other provision of law, an individual who qualifies for licensure under this section may offer or render professional services in this State, whether in person or by mail, telephone or electronic means, and no notice or other submission may be required of any such individual. Such an individual is subject to subsection 3.

[2009, c. 242, §13 (NEW) .]

3. **Conditions.** An individual licensee of another state exercising the practice privilege afforded under this section and the firm that employs that individual must consent, as a condition of the grant of the practice privilege:

A. To the personal and subject matter jurisdiction and disciplinary authority of the board; [2009, c. 242, §13 (NEW).]

B. To comply with the provisions of this chapter and the board's rules; and [2013, c. 217, Pt. K, §2 (AMD).]

C. To the stipulation that, in the event the license from the state of the individual's principal place of business is no longer valid, the individual will cease offering or rendering professional services in the State individually and on behalf of a firm. [2013, c. 217, Pt. K, §3 (AMD).]

D. [2013, c. 217, Pt. K, §4 (RP).]

[2013, c. 217, Pt. K, §§2-4 (AMD) .]

4. **Additional services.** An individual who qualifies for the practice privilege under this section may perform any of the services listed in this subsection for any entity with its home office in the State as long as the individual does so through a firm that has obtained a license issued under section 12252:

A. A financial statement audit or other engagement to be performed in accordance with the Statements on Auditing Standards; [2009, c. 242, §13 (NEW).]

B. An examination of prospective financial information to be performed in accordance with Statements on Standards for Attestation Engagements; or [2009, c. 242, §13 (NEW).]

C. An engagement to be performed in accordance with auditing standards of the Public Company Accounting Oversight Board, established in 15 United States Code, Section 7211 (2007). [2009, c. 242, §13 (NEW).]

[2009, c. 242, §13 (NEW) .]

SECTION HISTORY
2009, c. 242, §13 (NEW). 2013, c. 217, Pt. K, §§2-4 (AMD).

§12233. CONTINUING EDUCATION REQUIREMENTS FOR RENEWAL

An applicant for renewal of a public accountant or certified public accountant license must show that requirements of continuing professional education have been fulfilled. The board shall establish by rule the number of hours of continuing professional education required for renewal, which may be no more than 40 hours and no less than 20 hours annually. That education must consist of the general kinds and in subjects that are specified by the board by rule. The board may provide by rule that fulfillment of continuing professional education requirements of other states is accepted in lieu of the requirements of this subsection. The board may also provide by rule for prorated continuing professional education requirements to be met by applicants whose initial licenses were issued less than one year prior to the renewal date. The board may prescribe by rule lesser continuing education requirements to be met by applicants for license renewal whose licenses lapsed prior to their applications for renewal. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2009, c. 242, §14 (NEW).]

The board, in its discretion, may renew a license despite failure to furnish evidence of satisfaction of requirements of continuing professional education only upon condition that the applicant follow a particular program or schedule of continuing professional education. In issuing rules and individual orders regarding the requirements of continuing professional education, the board in its discretion may use and rely upon guidelines and pronouncements of recognized educational and professional organizations; may prescribe the content, duration and organization of courses; may take into account any impediments to interstate practice of public accountancy that result from differences between the requirements and those of other states; and may provide for relaxation or suspension of the requirements for applicants who certify that they do not intend to engage in the practice of public accountancy. [2009, c. 242, §14 (NEW).]

SECTION HISTORY
2009, c. 242, §14 (NEW).

§12234. EXPIRATION; RENEWAL

1. **Licensing period.** A license expires on the date set by the Commissioner of Professional and Financial Regulation pursuant to Title 10, section 8003, subsection 4 for the licensing period for which the license was issued. A license may be renewed upon receipt of an application for renewal and payment of the renewal fee as set under section 12203.

[2009, c. 242, §15 (NEW) .]

2. **Late renewals.** Licenses may be renewed up to 90 days after the date of expiration upon payment of a late fee in addition to the renewal fee as set under section 12203. Any person who submits an application for renewal more than 90 days after the expiration date is subject to all requirements governing new applicants under this chapter, in addition to fulfilling any continuing education requirements the board considers necessary under section 12233. The board in its discretion, giving due consideration to the protection of the public, may waive any requirements if that renewal application is made within 2 years from the date of that expiration.

[2009, c. 242, §15 (NEW) .]

3. **Excused from license fee.** Any licensee whose employment by any government agency prohibits or precludes the practice of public accountancy in this State, by application to the board, may be excused from paying the annual license fee during the period of that employment.

[2009, c. 242, §15 (NEW) .]

SECTION HISTORY
2009, c. 242, §15 (NEW).

Subchapter 4: LICENSURE OF PUBLIC ACCOUNTANTS
HEADING: PL 1987, C. 489, §2 (NEW); PL 2009, C, 242, §39 (AMD)

§12239. LICENSES ISSUED UNDER PRIOR LAW; PUBLIC ACCOUNTANTS

Any person who received from the board a license to practice as a public accountant under prior law may be styled and known as a public accountant, and no other persons may assume to use the abbreviation "PA" or any other words, letters or figures to indicate that the person using the abbreviation is the public accountant. [2009, c. 242, §16 (AMD).]

SECTION HISTORY
1987, c. 489, §2 (NEW). 2009, c. 242, §16 (AMD).

§12240. PUBLIC ACCOUNTANTS

(REPEALED)

SECTION HISTORY
1987, c. 489, §2 (NEW). 1989, c. 450, §50 (AMD). 1995, c. 353, §25 (AMD). 1997, c. 526, §14 (AMD). 1999, c. 245, §7 (AMD). 2003, c. 204, §§E4,5 (AMD). 2007, c. 402, Pt. Z, §§13, 14 (AMD). 2009, c. 242, §17 (RP).

§12241. RECIPROCITY

(REPEALED)

SECTION HISTORY
1987, c. 489, §2 (NEW). 2007, c. 402, Pt. Z, §15 (AMD). 2009, c. 242, §18 (RP).

§12242. DISCONTINUANCE OF INITIAL LICENSURE AS PUBLIC ACCOUNTANT; RENEWAL OF EXISTING LICENSES

No new public accountant licenses may be issued by the board on or after the effective date of this section. Holders of existing public accountant licenses may renew their licenses in the same manner as set forth in section 12233 for certified public accountants. Public accountant licenses expire in the same manner as set forth in section 12234 for certified public accountants. [2009, c. 242, §19 (NEW).]

SECTION HISTORY
2009, c. 242, §19 (NEW).

Subchapter 5: LICENSURE OF ACCOUNTING FIRMS HEADING: PL 1987, C. 489, §2 (NEW); 2007, C. 402, PT. Z, §27 (AMD); PL 2009, C. 242, §40 (AMD)

§12251. LICENSE; INDIVIDUAL

(REPEALED)

SECTION HISTORY
1987, c. 489, §2 (NEW). 1989, c. 483, §A54 (AMD). 1999, c. 245, §§8-11 (AMD). 2005, c. 347, §D4 (AMD). 2007, c. 384, §§9, 10 (AMD). 2007, c. 402, Pt. Z, §16 (AMD). 2009, c. 242, §20 (RP).

§12252. LICENSES; ACCOUNTING FIRMS

1. **Licensure.** The board shall grant or renew a license to accounting firms that submit the application required by the board, pay the fee as set under section 12203 and demonstrate their qualifications in accordance with this section.

A. A firm must hold a license issued under this section if it:

(1) Has an office in this State performing any of the services described in section 12201, subsection 3-A, paragraphs A to D;

(2) Has an office in this State that uses the title "CPA" or "CPA firm"; or

(3) Does not have an office in this State but performs any of the services described in section 12201, subsection 3-A, paragraphs A, C or D for a client having its home office in this State. [2007, c. 695, Pt. A, §38 (RPR).]

B. A firm that does not have an office in this State may perform services described in section 12201, subsection 3-A, paragraph B for a client having its home office in this State and may use the title "CPA" or "CPA firm" without a license issued under this section only if:

(1) It qualifies for a firm license pursuant to subsections 3 and 8; and

(2) It performs such services through an individual with practice privileges under section 12232. [2009, c. 242, §21 (AMD).]

C. A firm that is not subject to the requirements of paragraphs A and B may perform professional services other than those described in section 12201, subsection 3-A while using the title "CPA" or "CPA firm" in this State without a license issued under this section only if the firm:

(1) Performs such services through an individual with practice privileges under section 12232; and

(2) Has legal authority to perform such services in the state of that individual's principal place of business. [2009, c. 242, §21 (AMD).]

[2009, c. 242, §21 (AMD) .]

2. **Duration.** A license expires on the date set by the Commissioner of Professional and Financial Regulation pursuant to Title 10, section 8003, subsection 4 for the licensing period for which the license was issued. A license may be renewed upon receipt of an application for renewal and payment of the renewal fee as set under section 12203.

Licenses may be renewed up to 90 days after the date of expiration upon payment of a late fee in addition to the renewal fee as set under section 12203. Any firm that submits an application for renewal more than 90 days after the expiration date is subject to all requirements governing new applicants under this chapter. The board in its discretion, giving due consideration to the protection of the public, may waive any requirements if that renewal application is made within 2 years from the date of that expiration.

[2009, c. 242, §21 (AMD) .]

3. **Firm licenses.** The following provisions apply to the issuance of firm licenses.

A. An applicant for initial issuance or renewal of a license 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 certified public accountants or public accountants 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 who perform professional services in this State hold valid individual licenses issued by the board. Firms may include nonlicensee owners in accordance with paragraph B. [2009, c. 242, §21 (AMD).]

B. A certified public accountancy firm or public accountancy firm may include nonlicensee owners as long as:

(1) All nonlicensee owners are individuals who actively participate in the certified public accountancy firm or public accountancy firm;

(2) The firm complies with such other requirements as the board may impose by rule; and

(3) The firm designates an individual who is a licensee of this State or, in the case of a firm that must have a license pursuant to subsection 1, paragraph A, subparagraph (3), designates an individual who is a licensee of another state who meets the requirements set out in section 12232, subsection 1 who is responsible for the proper licensure of the firm and identifies that individual who is a licensee to the board. [2009, c. 242, §21 (AMD).]

[2009, c. 242, §21 (AMD) .]

4. **Office licensed.** An applicant for initial issuance or renewal of a license under this section shall license each office of the firm within this State with the board, pay the fee as set under section 12203 and show that each such office is under the charge of a person holding a valid license issued under section 12230 or 12231 or a corresponding provision of prior law or the laws of another state.

[2009, c. 242, §21 (AMD) .]

6. **Change in composition.** A licensed firm shall notify the board in writing, within 30 days after its occurrence, of any change in the identities of partners, officers or shareholders who work regularly within this State, any change in the number or location of offices within this State or any change in the identity of the persons in charge of those offices.

[2009, c. 242, §21 (AMD) .]

8. **Peer review for certified public accountancy firms.** As a condition to the granting or renewal of licenses to certified public accountancy firms, each applicant that provides a defined service other than compilations must successfully participate in an approved peer review program. Participation in such a program is governed by the following.

A. A peer review must be completed within 18 months after the initial granting of the license. The firm must undergo a peer review every 3 years for as long as it provides a defined service other than compilations. [2007, c. 695, Pt. A, §38 (RPR).]

B. A certified public accountancy firm that does not provide a defined service other than compilations is not required to undergo a peer review if the firm annually confirms in writing to the board that it does not provide a defined service other than compilations. A certified public accountancy firm that subsequently provides a defined service other than compilations must undergo a peer review within 18 months after the fiscal year end of the first defined services engagement other than compilations that it accepts. [2007, c. 695, Pt. A, §38 (RPR).]

The board is authorized to adopt rules to carry out the intent of this subsection. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

[2007, c. 695, Pt. A, §38 (RPR) .]

SECTION HISTORY
1987, c. 489, §2 (NEW). 1999, c. 200, §1 (AMD). 1999, c. 619, §§2,3 (AMD). 2001, c. 260, §F2 (AMD). 2003, c. 344, §D22 (AMD). 2005, c. 347, §D5 (AMD). 2007, c. 384, §§11-13 (AMD). 2007, c. 402, Pt. Z, §17 (AMD). 2007, c. 695, Pt. A, §38 (RPR). 2009, c. 242, §21 (AMD).

Subchapter 6: APPOINTMENT OF COMMISSIONER AS AGENT HEADING: PL 1987, C. 489, §2 (NEW)

§12263. APPOINTMENT OF COMMISSIONER AS AGENT

(REPEALED)

SECTION HISTORY
1987, c. 489, §2 (NEW). 2007, c. 402, Pt. Z, §18 (AMD). 2009, c. 242, §22 (AMD). 2013, c. 217, Pt. K, §5 (RP).

Subchapter 7: ENFORCEMENT AGAINST LICENSEES HEADING: PL 1987, C. 489, §2 (NEW); 2007, C. 402, PT. Z, §28 (AMD); PL 2009, C. 242, §41 (AMD)

§12273. REVOCATION OR SUSPENSION

(REPEALED)

SECTION HISTORY
1987, c. 489, §2 (NEW). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 402, Pt. Z, §19 (RP).

§12273-A. DENIAL OR REFUSAL TO RENEW LICENSE; DISCIPLINARY ACTION

In addition to the grounds enumerated in Title 10, section 8003, subsection 5-A, paragraph A, the board may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A for: [2007, c. 402, Pt. Z, §20 (NEW).]

1. **Loss of authority in other state.** Cancellation, revocation, suspension or refusal to renew authority to engage in the practice of public accountancy in any other state for any cause;

[2007, c. 402, Pt. Z, §20 (NEW) .]

2. **Failure to maintain compliance.** Failure, on the part of an applicant or a licensee to maintain compliance with the requirements for issuance or renewal of that license or to report the changes to the board required by section 12252, subsection 6;

[2009, c. 242, §23 (AMD) .]

3. **Revocation or suspension of right to practice.** Revocation or suspension of the right to practice before any state or federal agency;

[2007, c. 402, Pt. Z, §20 (NEW) .]

4. **Dishonesty, fraud, gross negligence, failure to file.** Dishonesty, fraud or gross negligence in the practice of public accountancy or in the filing or failure to file the licensee's own income tax returns;

[2007, c. 402, Pt. Z, §20 (NEW) .]

5. **Fraud.** Performance of any fraudulent act while holding a license issued under this chapter or a certificate or license issued under prior law; and

[2009, c. 242, §24 (AMD) .]

6. **Adverse conduct.** Any conduct reflecting adversely upon the licensee's fitness to engage in the practice of public accountancy.

[2007, c. 402, Pt. Z, §20 (NEW) .]

SECTION HISTORY
2007, c. 402, Pt. Z, §20 (NEW). 2009, c. 242, §§23, 24 (AMD).

§12274. ENFORCEMENT PROCEDURES; INVESTIGATIONS

1. **Board; action.**

[2007, c. 402, Pt. Z, §21 (RP) .]

2. **Review.** The board may review the publicly available professional work of licensees on a general and random basis, without any requirement of a formal complaint or suspicion of impropriety on the part of any particular licensee. If, as a result of such review, the board discovers reasonable grounds for a more specific investigation, the board may proceed under section 12273-A or Title 10, section 8003-A.

[2009, c. 242, §25 (AMD) .]

3. **Discipline.** In any case when the board renders a decision imposing discipline against a licensee, the board shall examine its records to determine whether the licensee holds a certificate or a license in any other state; and, if so, the board shall notify the board of accountancy of that other state of its decision by mail within 45 days of rendering the decision. The board may also furnish information relating to proceedings resulting in disciplinary action to other public authorities and to private professional organizations having a disciplinary interest in the licensee.

[2009, c. 242, §26 (AMD) .]

4. **Board; consideration.** The board shall consider applications upon suspension, revocation or refusal to renew according to this subsection.

A. In any case when the board has suspended or revoked a license or refused to renew a license, the person or firm affected may apply in writing to the board for relief. For good cause shown, the board may modify the suspension or reissue the license. [2009, c. 242, §27 (AMD).]

B. The board shall by rule specify the manner in which those applications must be made, the times within which they must be made and the circumstances in which hearings will be held. [2007, c. 402, Pt. Z, §23 (AMD).]

C. Before reissuing or terminating the suspension of a license under this section, and as a condition for reissuance or termination of suspension, the board may require the applicant to show successful completion of specified continuing professional education. The board may make the reinstatement of a license conditional and subject to satisfactory completion of a quality review conducted in such fashion as the board may specify. [2009, c. 242, §28 (AMD).]

[2009, c. 242, §§27, 28 (AMD) .]

SECTION HISTORY
1987, c. 489, §2 (NEW). 1999, c. 547, §B74 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 402, Pt. Z, §§21-23 (AMD). 2007, c. 695, Pt. B, §15 (AMD). 2007, c. 695, Pt. C, §18 (AMD). 2009, c. 242, §§25-28 (AMD).

§12275. UNLAWFUL ACTS

1. **Issuance of reports.** No person or firm not holding a valid license issued under this chapter may issue a report, including reviews and compilations, on financial statements of any other person, firm, organization or governmental unit. This prohibition does not apply to the following:

A. An officer, partner or employee of any firm or organization affixing that person's signature to any statement or report in reference to the financial affairs of that firm or organization with any wording designating the position, title or office that that person holds in the organization; [2007, c. 402, Pt. Z, §24 (AMD).]

B. Any act of a public official or employee in the performance of that person's duties as such; or [2007, c. 402, Pt. Z, §24 (AMD).]

C. The performance by any person of other services involving the use of accounting skills, including management advisory or consulting services, the preparation of tax returns, the furnishing of advice on tax matters and the preparation of financial statements without the issuance of reports. [1987, c. 489, §2 (NEW).]

[2009, c. 242, §29 (AMD) .]

2. **Misuse of title; individual; certified public accountants.** No person not licensed as a certified public accountant under this chapter may use or assume the title of "certified public accountant," the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card or device indicating that the person is a certified public accountant.

[2009, c. 242, §30 (AMD) .]

3. **Use of title.** A firm may not assume or use the title or designation "certified public accountant," the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card or device indicating that the firm is composed of certified public accountants, unless:

A. The firm holds a valid license issued under section 12252; and [2007, c. 402, Pt. Z, §24 (AMD).]

B. A simple majority of all partners, officers, shareholders, members or managers of the firm are certified public accountants licensed in a state. [2009, c. 242, §31 (AMD).]

[2009, c. 242, §31 (AMD) .]

4. **Misuse of title; public accountant.** No person may assume or use the title or designation "public accountant," the abbreviation "PA" or any other title, designation, words, letters, abbreviation, sign, card or device indicating that the person is a public accountant unless that person holds a valid public accountant license issued under former section 12251.

[2009, c. 242, §32 (AMD) .]

5. **Misuse of title; firm; public accountant.** No firm not holding a valid license issued under section 12252 may assume or use the title or designation "public accountant," the abbreviation "PA" or any other title, designation, words, letters, abbreviation, sign, card or device indicating that the firm is composed of public accountants.

[2007, c. 402, Pt. Z, §24 (AMD) .]

6. **Similar titles prohibited.** No person or firm not holding a valid license issued under this chapter may assume or use the title or designation "certified accountant," "chartered accountant," "enrolled accountant," "licensed accountant," "registered accountant," "accredited accountant" or any other title or designation likely to be confused with the titles "certified public accountant," "public accountant" or use any of the abbreviations "CA," "LA," "RA," "AA" or similar abbreviations likely to be confused with the abbreviations "CPA" or "PA," provided that a holder of a certificate who does not also hold a license may use the titles pertaining to that certificate in any manner not prohibited by rules adopted by the board under section 12214, subsection 4.

[2009, c. 242, §33 (AMD) .]

7. **Similar designation prohibited.** No person or firm not holding a valid license issued under this chapter may assume or use any title or designation that includes the words "auditor" or "auditing" in connection with any other language, including the language of a report, that implies that the person or firm holds such a license or has special competence as an auditor, except that this subsection does not prohibit any officer, partner or employee of any firm or organization from affixing that person's signature to any statement

in reference to the financial affairs of that firm or organization with any wording designating the position, title or office that that person holds in the firm or organization or prohibit any act of a public official or employee in the performance of that person's duties.

[2009, c. 242, §34 (AMD) .]

8. **Unauthorized practice.** No person holding a certificate may engage in the practice of public accountancy, unless that person also holds a valid license issued under this chapter.

[2009, c. 242, §35 (AMD) .]

9. **Form of firm.** No person or firm holding a license may engage in the practice of public accountancy using a professional or firm name or designation that is misleading about the legal form of the firm, about the persons who are partners, officers or shareholders of the firm or about any other matter, except that the names of one or more former partners or shareholders may be included in the name of a firm or its successor.

[2007, c. 402, Pt. Z, §24 (AMD) .]

10. **Foreign practice.** Subsections 1 to 11 do not apply to a person or firm holding a certificate, designation, degree or license granted in a foreign country entitling the holder to engage in the practice of public accountancy or its equivalent in that country, whose activities in this State are limited to the provision of professional services to persons or firms who are residents of, governments of or business entities of the country in which that person holds that entitlement, who issues no reports with respect to the financial statements of any other persons, firms or governmental units in this State, and who does not use in this State any title or designation other than the one under which that person practices in that country, followed by a translation of that title or designation into the English language, if it is in a different language and by the name of that country.

[2007, c. 402, Pt. Z, §24 (AMD) .]

11. **Employees.** Nothing in this chapter prohibits any person, not a certified public accountant or public accountant, from serving as an employee of, or an assistant to, a certified public accountant, public accountant, a firm of certified public accountants or of public accountants holding a license issued under this chapter, provided that the employee or assistant may not issue any accounting or financial statements over the employee's or assistant's name.

[2009, c. 242, §36 (AMD) .]

12. **Commissions; referral fees.** A licensee, when performing for a client a defined service, may not receive a commission or a referral fee:

A. For recommending or referring to a client any product or service; [1999, c. 245, §12 (NEW).]

B. For recommending or referring any product or service to be supplied by a client; or [1999, c. 245, §12 (NEW).]

C. As a consequence of a decision by a client to purchase or supply a particular product or service. [1999, c. 245, §12 (NEW).]

Notwithstanding paragraphs A, B and C, a licensee may receive a commission or a referral fee if the licensee's compilation report discloses in writing a lack of independence.

This prohibition applies during the period in which the licensee is engaged to perform any of the defined services and the period covered by any historical financial statements involved in the defined services.

A licensee who is not prohibited by this section from receiving a commission or a referral fee shall disclose in writing to any person or entity to whom the licensee recommends or refers a product or service to which the commission or referral fee relates the fact that the licensee has been paid or expects to be paid a commission or referral fee.

[1999, c. 245, §12 (NEW) .]

13. **Contingency fees.** A licensee or a licensee's firm may not:

A. When involved in providing for a client a defined service:

(1) Perform for a contingent fee any services for a client; or

(2) Receive a contingency fee from a client; or [1999, c. 245, §12 (NEW).]

B. Prepare an original or amended tax return or claim for a tax refund for a contingent fee. [1999, c. 245, §12 (NEW).]

Notwithstanding paragraph A, a licensee when providing a defined service may receive a contingency fee if the licensee's compilation report discloses in writing a lack of independence.

The prohibitions apply during the period in which the licensee is engaged to perform any of the services listed in this section and the period covered by any historical financial statements involved in any of the listed services.

As used in this subsection a "contingent fee" or "contingency fee" means a fee established for the performance of any service pursuant to an arrangement in which no fee is charged unless a specified finding or result is attained or in which the amount of the fee is otherwise dependent upon the finding or result of the service. For purposes of this subsection, fees are not regarded as being contingent if fixed by courts or other public authorities or, in tax matters, if determined based on the results of judicial proceedings or the findings of governmental agencies. A licensee's fees may vary depending on the complexity of services rendered.

[1999, c. 245, §12 (NEW) .]

14. **Substantial equivalency.** For purposes of this section:

A. An individual practicing as a certified public accountant without a license on the basis of substantial equivalency pursuant to section 12232 and complying with the restrictions on the scope of such a practice is equivalent to an individual licensed as a certified public accountant under section 12230 or 12231 or a corresponding provision of prior law, and each reference in this section to a licensed certified public accountant is deemed to include, on an equal basis, such an individual; [2009, c. 242, §37 (AMD).]

B. A firm in compliance with section 12252, subsection 1 must, for the purposes of this section, be deemed to hold a valid license issued under section 12252; and [2009, c. 242, §37 (AMD).]

C. Notwithstanding any other provision of this section, it is not a violation of this section if a firm that does not hold a valid license under section 12252 and that does not maintain an office in this State provides professional services in this State if the firm complies with the requirements of section 12252, subsection 1, paragraph B or C, whichever is applicable. [2009, c. 242, §37 (AMD).]

[2009, c. 242, §37 (AMD) .]

SECTION HISTORY
1987, c. 489, §2 (NEW). 1999, c. 200, §2 (AMD). 1999, c. 245, §12 (AMD). 1999, c. 619, §4 (AMD). 2007, c. 384, §14 (AMD). 2007, c. 402, Pt. Z, §24 (AMD). 2009, c. 242, §§29-37 (AMD).

§12276. INJUNCTION

(REPEALED)

SECTION HISTORY
1987, c. 489, §2 (NEW). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 402, Pt. Z, §25 (RP).

§12277. UNLICENSED PRACTICE

A person who violates section 12275 is subject to the provisions of Title 10, section 8003-C. [2007, c. 402, Pt. Z, §26 (RPR).]

SECTION HISTORY
1987, c. 489, §2 (NEW). 2007, c. 402, Pt. Z, §26 (RPR).

§12278. SINGLE ACT EVIDENCE OF PRACTICE

In any action brought under section 12273-A or 12277 or Title 10, section 8003, subsection 5-A, evidence from the commission of a single act prohibited by this chapter is sufficient to justify a penalty, injunction, restraining order or conviction, respectively, without evidence of a general course of conduct. [2007, c. 695, Pt. B, §16 (AMD).]

SECTION HISTORY
1987, c. 489, §2 (NEW). 2007, c. 695, Pt. B, §16 (AMD).

§12279. CONFIDENTIAL COMMUNICATIONS

Except by permission of the client engaging a licensee under this chapter, or the heirs, successors or personal representatives of that client, a licensee or any partner, officer, shareholder or employee of a licensee may not voluntarily disclose information communicated to the licensee, or any partner, officer, shareholder or employee of the licensee, by the client relating to, and in connection with, services rendered to the client by the licensee in the practice of public accountancy. That information must be considered confidential as long as nothing may be construed as prohibiting the disclosure of information required to be disclosed by the standards of the public accounting profession in reporting on the examination of financial statements or as prohibiting disclosures in court proceedings, investigations or proceedings under section 12273-A or Title 10, section 8003, subsection 5-A, in ethical investigations conducted by private professional organizations or in the course of quality reviews. [2007, c. 695, Pt. B, §17 (AMD).]

SECTION HISTORY
1987, c. 489, §2 (NEW). 2007, c. 695, Pt. B, §17 (AMD).

§12280. LICENSEE'S WORKING PAPERS; CLIENT'S RECORDS

1. **Records; property of licensee.** All statements, records, schedules, working papers and memoranda made by a licensee or a partner, shareholder, officer, director or employee of a licensee, incident to, or in the course of, rendering services to a client in the practice of public accountancy, except the reports submitted by the licensee to the client and except for records that are part of the client's records, shall be and remain the property of the licensee in the absence of an express agreement between the licensee and the client to the contrary. No statement, record, schedule, working paper or memorandum may be sold, transferred or bequeathed, without the consent of the client or his personal representative or assignee, to anyone other than one or more surviving partners or stockholders or new partners or stockholders of the licensee or any combined or merged firm or successor in interest to the licensee.

[1987, c. 489, §2 (NEW) .]

2. **Licensee to furnish items to client.** A licensee shall furnish to his client or former client upon request and reasonable notice:

A. A copy of the licensee's working papers, to the extent that the working papers include records that would ordinarily constitute part of the client's records and are not otherwise available to the client; and [1987, c. 489, §2 (NEW).]

B. Any accounting or other records belonging to, or obtained from or on behalf of, the client that the licensee removed from the client's premises or received for the client's account. The licensee may make and retain copies of those documents of the client when they form the basis for work done by him. [1987, c. 489, §2 (NEW).]

[1987, c. 489, §2 (NEW) .]

SECTION HISTORY
1987, c. 489, §2 (NEW).

Chapter 113-A: ACUPUNCTURISTS

Subchapter 1: GENERAL PROVISIONS HEADING: PL 1987, C. 488, §3 (NEW); 1995, C. 671, §12 (RP)

§12401. ACUPUNCTURE LICENSING BOARD

(REPEALED)

SECTION HISTORY
1987, c. 488, §3 (NEW). 1989, c. 503, §B155 (AMD). 1995, c. 671, §12 (RP).

§12402. OBJECTIVE

(REPEALED)

SECTION HISTORY
1987, c. 488, §3 (NEW). 1995, c. 671, §12 (RP).

§12403. DEFINITIONS

(REPEALED)

SECTION HISTORY
1987, c. 488, §3 (NEW). 1993, c. 659, §A9 (AMD). 1995, c. 671, §12 (RP).

§12404. LICENSURE; PENALTY

(REPEALED)

SECTION HISTORY
1987, c. 488, §3 (NEW). 1989, c. 307, §§1,2,7 (AMD). 1989, c. 502, §C13 (AMD). 1993, c. 659, §A10 (AMD). 1995, c. 671, §12 (RP).

§12405. EXCEPTION

(REPEALED)

SECTION HISTORY
1987, c. 488, §3 (NEW). 1995, c. 671, §12 (RP).

Subchapter 2: ACUPUNCTURE LICENSING BOARD HEADING: PL 1987, C. 488, §3 (NEW); 1995, C. 671, §12 (RP)

§12406. ESTABLISHMENT AND COMPENSATION

(REPEALED)

SECTION HISTORY
1987, c. 488, §3 (NEW). 1993, c. 600, §A265 (AMD). 1995, c. 397, §103 (AMD). 1995, c. 402, §A37 (AMD). 1995, c. 625, §A41 (AMD). 1995, c. 671, §12 (RP).

§12407. POWERS AND DUTIES OF THE BOARD

(REPEALED)

SECTION HISTORY
1987, c. 488, §3 (NEW). 1995, c. 397, §104 (AMD). 1995, c. 402, §A38 (AMD). 1995, c. 625, §A42 (AMD). 1995, c. 671, §12 (RP).

Subchapter 3: LICENSING REQUIREMENTS HEADING: PL 1987, C. 488, §3 (NEW); 1995, C. 671, §12 (RP)

§12408. ELIGIBILITY REQUIREMENTS FOR ACUPUNCTURISTS

(REPEALED)

SECTION HISTORY
1987, c. 488, §3 (NEW). 1989, c. 307, §§3-5,7 (AMD). 1993, c. 35, §1 (AMD). 1993, c. 600, §B21 (AMD). 1995, c. 402, §A39 (AMD). 1995, c. 671, §12 (RP).

§12409. LICENSING

(REPEALED)

SECTION HISTORY
1987, c. 488, §3 (NEW). 1995, c. 402, §A40 (AMD). 1995, c. 671, §12 (RP).

§12410. FEES

(REPEALED)

SECTION HISTORY
1987, c. 488, §3 (NEW). 1995, c. 397, §105 (AMD). 1995, c. 402, §A41 (AMD). 1995, c. 625, §A43 (AMD). 1995, c. 671, §12 (RP).

§12411. REAPPLICATION

(REPEALED)

SECTION HISTORY
1987, c. 488, §3 (NEW). 1995, c. 671, §12 (RP).

§12412. APPLICATION FOR RENEWAL

(REPEALED)

SECTION HISTORY
1987, c. 488, §3 (NEW). 1989, c. 307, §6 (AMD). 1995, c. 402, §A42 (AMD). 1995, c. 671, §12 (RP).

Subchapter 4: SUSPENSION AND REVOCATION HEADING: PL 1987, C. 488, §3 (NEW); 1995, C. 671, §12 (RP)

§12413. SUSPENSION AND REVOCATION

(REPEALED)

SECTION HISTORY
1987, c. 488, §3 (NEW). 1995, c. 402, §§A43,44 (AMD). 1995, c. 671, §12 (RP).

§12414. FINDINGS

(REPEALED)

SECTION HISTORY
1995, c. 402, §A45 (NEW). 1995, c. 671, §12 (RP).

Chapter 113-B: COMPLEMENTARY HEALTH CARE PROVIDERS

Subchapter 1: BOARD OF COMPLEMENTARY HEALTH CARE PROVIDERS HEADING: PL 1995, C. 671, §13 (NEW)

§12501. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1995, c. 671, §13 (NEW).]

1. **Acupuncture.** "Acupuncture" means the insertion of fine metal needles through the skin at specific points on or near the surface of the body with or without the palpation of specific points on the body and with or without the application of electric current or heat to the needles or skin, or both. The practice of acupuncture is based on traditional oriental theories and serves to normalize physiological function, treat certain diseases and dysfunctions of the body, prevent or modify the perception of pain and promote health and well-being.

[2003, c. 666, §1 (AMD) .]

2. **Acupuncture intern.** "Acupuncture intern" means an acupuncture student enrolled in an acupuncture internship program approved by the board that involves practical training, including needle insertion on human subjects.

[1995, c. 671, §13 (NEW) .]

3. **Approved naturopathic medical college.** "Approved naturopathic medical college" means a college or program granting the degree of doctor of naturopathic medicine or doctor of naturopathy approved by the board that:

A. Is accredited by an accrediting agency recognized by the Federal Government; or [1995, c. 671, §13 (NEW).]

B. Is a candidate for accreditation with such an agency. [1995, c. 671, §13 (NEW).]

[1995, c. 671, §13 (NEW) .]

4. **Board.** "Board" means the Board of Complementary Health Care Providers.

[1995, c. 671, §13 (NEW) .]

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

[1995, c. 671, §13 (NEW) .]

6. **Homeopathic preparation.** "Homeopathic preparation" means medicine prepared according to the "Homeopathic Pharmacopoeia of the United States Revised Service" (Nov. 1995).

[1995, c. 671, §13 (NEW) .]

7. **Natural antibiotics.** "Natural antibiotics" means antimicrobial, antifungal and antiprotozoal agents that are naturally occurring substances or are manufactured substances that are substantially identical to those naturally occurring substances.

[1995, c. 671, §13 (NEW) .]

8. **Naturopathic acupuncture.** "Naturopathic acupuncture" means the insertion of acupuncture needles into specific points on the skin to treat human disease and impairment and to relieve pain. The practice of naturopathic acupuncture is only within the scope of practice of naturopathic doctors certified pursuant to section 12525.

[1995, c. 671, §13 (NEW) .]

9. **Naturopathic doctor.** "Naturopathic doctor" means a person authorized and licensed to practice naturopathic medicine under this chapter.

[1995, c. 671, §13 (NEW) .]

10. **Naturopathic manipulative therapy.** "Naturopathic manipulative therapy" means the manually administered or mechanical treatment of body structures or tissues in accordance with naturopathic principles for the purpose of restoring normal physiological function to the body by normalizing and balancing the musculoskeletal system of the body.

[1995, c. 671, §13 (NEW) .]

11. **Naturopathic medicine.** "Naturopathic medicine" means a system of health care for the prevention, diagnosis and treatment of human health conditions, injuries and diseases that uses education, natural medicines and therapies to support and stimulate the individual's intrinsic self-healing processes.

[1995, c. 671, §13 (NEW) .]

12. **Naturopathic physical medicine.** "Naturopathic physical medicine" means the therapeutic use of physical agents of air, water, heat, cold, sound, light and electromagnetic nonionizing radiation and the physical modalities of electrotherapy, diathermy, ultraviolet light, ultrasound, hydrotherapy, naturopathic manipulative therapy, therapeutic exercise and acupuncture if the provider is certified pursuant to section 12525, subsection 3.

[1995, c. 671, §13 (NEW) .]

13. **Office procedures.** "Office procedures" means methods for the repair and care incidental to superficial lacerations and abrasions, superficial lesions and the removal of foreign bodies located in the superficial tissues. The use of antiseptics and local anesthetics in connection with these methods is permitted. The use of general, regional or spinal anesthetics, major surgery, surgery of the body cavities or specialized surgeries such as plastic surgery, surgery involving the eye or surgery when tendons are involved is not permitted.

[1995, c. 671, §13 (NEW) .]

14. **Person.** "Person" means any individual, firm, partnership, corporation or other association or organization.

[1995, c. 671, §13 (NEW) .]

15. **Topical medicine.** "Topical medicine" means topical analgesics, anesthetics, antiseptics, scabicides, antifungals and antibacterials.

[1995, c. 671, §13 (NEW) .]

SECTION HISTORY
1995, c. 671, §13 (NEW). 2003, c. 666, §1 (AMD).

§12502. BOARD OF COMPLEMENTARY HEALTH CARE PROVIDERS ESTABLISHED

1. **Membership.** The Board of Complementary Health Care Providers, as established in Title 5, section 12004-A, subsection 8-A, shall regulate the professions of acupuncture and naturopathic medicine according to the provisions of this chapter. The board consists of 7 members appointed by the Governor. The Governor shall make the initial appointments to the board no later than 60 days after the effective date of this section and shall inform the Commissioner of Professional and Financial Regulation of these appointments. The commissioner shall call the first meeting of the board on a date no later than 30 days following notification of appointments by the Governor. All members of the board must be residents of this State. Two members of the board must be acupuncturists licensed in this State. Two members of the board must be practitioners of naturopathic medicine who are eligible for licensure under, or are licensed pursuant to, the requirements of subchapter 3. One member must be a public member as defined in Title 5, section 12004-A. One member must be an allopathic or osteopathic physician who is licensed in this State. One member must be a pharmacist who is licensed in this State.

[2007, c. 402, Pt. AA, §1 (AMD) .]

2. **Terms.** Appointments are for 3-year terms. Appointments of members must comply with Title 10, section 8009. The Governor may remove any member for cause.

[2007, c. 402, Pt. AA, §1 (AMD) .]

3. **Qualifications.** Each board member, other than the public member, must have been engaged in the active practice of the member's profession in the State for a minimum of 3 years prior to appointment.

[2007, c. 402, Pt. AA, §1 (AMD) .]

4. **Vacancy.**

[2007, c. 402, Pt. AA, §1 (RP) .]

5. **Quorum.**

[2007, c. 402, Pt. AA, §1 (RP) .]

6. **Meetings; chair.** The board shall meet at least once a year to conduct its business and 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.

[2013, c. 246, Pt. B, §22 (AMD) .]

7. **Reporting.**

[2007, c. 402, Pt. AA, §1 (RP) .]

SECTION HISTORY
1995, c. 671, §13 (NEW). 1997, c. 727, §C11 (AMD). 2007, c. 402, Pt. AA, §1 (AMD). 2013, c. 246, Pt. B, §22 (AMD).

§12503. POWERS AND DUTIES OF THE BOARD

The board has the following powers and duties in addition to all other powers and duties set forth in this chapter. [1995, c. 671, §13 (NEW).]

1. **Duties.** The board shall:

A. Adopt rules necessary to administer this chapter; [2007, c. 402, Pt. AA, §2 (AMD).]

B. Set standards of practice for acupuncturists and naturopathic doctors; [1995, c. 671, §13 (NEW).]

C. [2003, c. 666, §2 (RP).]

D. Ensure that acupuncturists and naturopathic doctors serving the public meet minimum standards of proficiency and competency to protect the health, safety and welfare of the public; and [2007, c. 402, Pt. AA, §2 (AMD).]

E. Administer and enforce the provisions of this chapter and any rules adopted by the board under that authority granted in this chapter. [2007, c. 402, Pt. AA, §2 (AMD).]

F. [2007, c. 402, Pt. AA, §2 (RP).]

G. [2007, c. 402, Pt. AA, §2 (RP).]

H. [2007, c. 402, Pt. AA, §2 (RP).]

I. [2007, c. 402, Pt. AA, §2 (RP).]

J. [2007, c. 402, Pt. AA, §2 (RP).]

K. [2007, c. 402, Pt. AA, §2 (RP).]

[2007, c. 402, Pt. AA, §2 (AMD) .]

2. **Complaints.**

[2007, c. 402, Pt. AA, §2 (RP) .]

3. **Hearings.**

[2007, c. 402, Pt. AA, §2 (RP) .]

4. **Subpoena power; administration of oaths; power to compel production of documents.**

[2007, c. 402, Pt. AA, §2 (RP) .]

5. **Witness fees.**

[2007, c. 402, Pt. AA, §2 (RP) .]

6. **Suspension and revocation.**

[2007, c. 402, Pt. AA, §2 (RP) .]

SECTION HISTORY
1995, c. 671, §13 (NEW). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2003, c. 666, §2 (AMD). 2007, c. 402, Pt. AA, §2 (AMD).

§12503-A. DENIAL OR REFUSAL TO RENEW LICENSE; DISCIPLINARY ACTION

In addition to the grounds enumerated in Title 10, section 8003, subsection 5-A, paragraph A, the board may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A upon a legal finding of mental incompetence. [2007, c. 402, Pt. AA, §3 (NEW).]

SECTION HISTORY
2007, c. 402, Pt. AA, §3 (NEW).

§12504. UNAUTHORIZED EMPLOYMENT

A person in the course of business may not employ an acupuncturist or naturopathic doctor who does not have a license unless that person is a student or intern within the meaning of this chapter. [1995, c. 671, §13 (NEW).]

SECTION HISTORY
1995, c. 671, §13 (NEW).

§12505. VIOLATION

(REPEALED)

SECTION HISTORY
1995, c. 671, §13 (NEW). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 402, Pt. AA, §4 (RP).

§12505-A. UNLICENSED PRACTICE

A person who violates section 12504, 12511 or 12521 is subject to the provisions of Title 10, section 8003. [2007, c. 402, Pt. AA, §5 (NEW).]

SECTION HISTORY
2007, c. 402, Pt. AA, §5 (NEW).

§12506. RULEMAKING

Rules adopted pursuant to section 12522, subsection 4 are major substantive rules as defined by Title 5, chapter 375, subchapter 2-A. All other rules adopted pursuant to this chapter are routine technical rules. [2007, c. 621, §12 (AMD).]

SECTION HISTORY
1995, c. 671, §13 (NEW). 2007, c. 621, §12 (AMD).

Subchapter 2: ACUPUNCTURE LICENSING REQUIREMENTS AND SCOPE OF PRACTICE HEADING: PL 1995, C. 671, §13 (NEW)

§12511. LICENSURE

1. **Licensure required.** A person may not practice acupuncture or profess to be practicing as an acupuncturist in this State unless that person holds a current and valid license from the board, except that a student of acupuncture who has completed at least one year of full-time study in a board-approved

acupuncture school may practice acupuncture in a board-approved internship program. The student must be supervised, as defined by rule, by an instructor who is a licensed acupuncturist in this State and be identified as an acupuncture intern when in a clinical setting.

[2007, c. 402, Pt. AA, §6 (AMD) .]

2. **Exception.** This chapter does not apply to any person who is licensed to practice any healing art or science and who is practicing acupuncture in the course of that practice and within the scope of that license.

[1995, c. 671, §13 (NEW) .]

SECTION HISTORY
1995, c. 671, §13 (NEW). 2007, c. 402, Pt. AA, §6 (AMD).

§12512. QUALIFICATIONS FOR ACUPUNCTURISTS

The eligibility of an applicant for a license to practice acupuncture must be determined in accordance with the following. [1995, c. 671, §13 (NEW).]

1. **Eligibility.** To be eligible to apply for a license to practice acupuncture, an applicant must:

A. Be at least 21 years of age; and [1995, c. 2, §80 (COR).]

B. Have met requirements regarding education and experience as established by the board. These requirements must include the following:

(1) A baccalaureate degree from an accredited institution of higher learning, a license from the State to practice as a registered professional nurse or successful completion of the training program and any competency examination required by the Board of Licensure in Medicine to be qualified as a physician's assistant;

(2) A minimum of 1,000 hours of classroom instruction in acupuncture and related subjects at an institution approved by the board;

(3) A minimum of 300 hours of clinical experience in the field of acupuncture; and

(4) Certification by the National Commission for the Certification of Acupuncturists and Oriental Medicine, or its successor or other organization approved by the board, or passage of a written examination approved by the board. [2007, c. 402, Pt. AA, §7 (AMD).]

[2007, c. 402, Pt. AA, §7 (AMD) .]

2. **Endorsement.** An applicant who holds a current valid license to practice acupuncture from another state with requirements for licensure at least equal to the requirements under this section must be issued a license by the board.

[1995, c. 671, §13 (NEW) .]

SECTION HISTORY
RR 1995, c. 2, §80 (COR). 1995, c. 671, §13 (NEW). 2007, c. 402, Pt. AA, §7 (AMD).

§12513. LICENSING

1. **Licensed acupuncturist.** The board shall issue a license to practice acupuncture to an applicant who has satisfactorily met the following minimal requirements:

A. The eligibility requirements set forth in section 12512; and [1995, c. 671, §13 (NEW).]

B. Any other reasonable criteria the board may prescribe by rule. [1995, c. 671, §13 (NEW).]

[1995, c. 671, §13 (NEW) .]

SECTION HISTORY
1995, c. 671, §13 (NEW).

§12513-A. SCOPE OF PRACTICE

1. **Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Chinese patent remedies" means patent remedies used in accordance with traditional Chinese, Japanese and Korean herbal literature. [2003, c. 666, §3 (NEW).]

B. "Chinese premade herbal remedies" means premade herbal remedies used in accordance with traditional Chinese, Japanese and Korean herbal literature. [2003, c. 666, §3 (NEW).]

C. "Custom-made Chinese herbal formulations" means custom-made herbal formulations used in accordance with traditional Chinese, Japanese and Korean herbal literature. [2003, c. 666, §3 (NEW).]

[2003, c. 666, §3 (NEW) .]

2. **Scope of practice.** The scope of practice of acupuncturists includes acupuncture and the allied techniques and modalities of the distinct system of health care that use oriental principles to diagnose and treat illness, injury, pain and other conditions by regulating the flow and balance of energy to restore and maintain health. These allied techniques and modalities include the following, as defined by and used exclusively in accordance with the traditions and formal curricula taught in accredited colleges of acupuncture: oriental diagnostic procedures; electrical and magnetic stimulation; moxibustion and other forms of heat therapy; sound, light and vibrational therapy; cupping techniques and gua sha; recommendation and dispensing of Chinese patent remedies or Chinese premade herbal remedies and lifestyle and dietary counseling; formulation and dispensing of custom-made Chinese herbal formulations, to the extent that an acupuncturist has received additional certification pursuant to subsection 3; sotai; shiatsu; qi gong; zero balancing; tui na; and acupressure. These techniques and modalities do not include manipulation or mobilization of the skeletal articulations of the human body.

[2003, c. 666, §3 (NEW) .]

3. **Additional certification.** Certification is required for licensed acupuncturists to practice the formulation and dispensing of custom-made Chinese herbal formulations. "Formulation" means the preparation of traditional combinations of herbs to produce formulas from Chinese herbal literature, the modification of such traditional combinations or the writing of new formulas to address individual symptom presentations, through addition, deletion, substitution or change in dosages of ingredients and the dispensing of these herbal preparations to patients.

A. The board shall adopt rules specifying the training required for licensed acupuncturists to obtain the certification for custom-made Chinese herbal formulation. These requirements must include a minimum number of hours of combined classroom and clinical training or, for those licensed acupuncturists practicing custom-made Chinese herbal formulation prior to July 1, 2004, prior experience demonstrated by evidence satisfactory to the board. Rules adopted by the board in accordance with this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [2003, c. 666, §3 (NEW).]

B. A licensed acupuncturist who can prove to the satisfaction of the board that the licensed acupuncturist was engaged in the practice of custom-made Chinese herbal formulation prior to July 1, 2004 may continue to practice that modality but must, no later than 2 years after the board adopts rules providing certification requirements in accordance with paragraph A, comply with those rules. [2003, c. 666, §3 (NEW).]

C. A licensed acupuncturist who can prove to the satisfaction of the board that the licensed acupuncturist has been duly licensed or certified to practice custom-made Chinese herbal formulation by the licensing authority of another state may continue to practice that modality, except that the board may require that the licensee complete additional training consistent with its rules within 3 years if the board finds that the standards applied in the state in which the licensed acupuncturist was certified or licensed are less stringent than those adopted in the board's rules. [2003, c. 666, §3 (NEW).]

[2003, c. 666, §3 (NEW) .]

4. **Practice by other persons.** The listing of allied techniques and modalities in subsection 2, including acupressure and qi gong, may not be construed to require any person who practices the same or similar techniques or modalities to obtain a license as an acupuncturist under section 12511 and may not be construed to limit, interfere with or prevent any licensed person from practicing the same or similar techniques and modalities within the scope of that person's license, whether or not the defined scope of that license contains specific lists of techniques or modalities.

[2003, c. 666, §3 (NEW) .]

SECTION HISTORY
2003, c. 666, §3 (NEW).

§12514. FEES

(REPEALED)

SECTION HISTORY
1995, c. 671, §13 (NEW). 1999, c. 257, §6 (AMD). 1999, c. 386, §T1 (AMD). 2003, c. 666, §4 (RP).

§12514-A. FEES

The Director of the Office of Professional and Occupational Regulation within the Department of Professional and Financial Regulation may establish by rule fees for purposes authorized under this subchapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for any application may not exceed $200, the fee for initial and renewal licensure may not exceed $675 annually and the fee for initial and renewal certification in custom-made Chinese herbal formulation may not exceed $200 annually. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [2003, c. 666, §5 (NEW); 2011, c. 286, Pt. B, §5 (REV).]

SECTION HISTORY
2003, c. 666, §5 (NEW). 2011, c. 286, Pt. B, §5 (REV).

§12515. REAPPLICATION

Any applicant who is denied a license as an acupuncturist may apply again for licensing after a period of not less than 6 months from the date of the last denial. [1995, c. 671, §13 (NEW).]

SECTION HISTORY
1995, c. 671, §13 (NEW).

§12516. APPLICATION FOR RENEWAL

1. **Requirements.** Prior to the expiration of a license, a licensee may make an application for renewal upon payment of the renewal fee as set under section 12514-A and upon satisfactory demonstration of completion of continuing education requirements adopted by the board as a condition of renewal. It is not a condition of renewal that an applicant who qualified for licensure as a licensed registered nurse continue to be licensed as a registered nurse.

[2007, c. 402, Pt. AA, §8 (AMD) .]

2. **Late renewal.** An application made no more than 90 days past the date of expiration of a license must include a late fee in addition to the renewal fee as set under section 12514-A. An application received more than 90 days past the expiration date is subject to all requirements covering new applicants under this chapter.

[2007, c. 402, Pt. AA, §8 (AMD) .]

SECTION HISTORY
1995, c. 671, §13 (NEW). 2003, c. 666, §6 (AMD). 2007, c. 402, Pt. AA, §8 (AMD).

Subchapter 3: NATUROPATHIC MEDICINE LICENSING REQUIREMENTS AND SCOPE OF PRACTICE HEADING: PL 1995, C. 671, §13 (NEW)

§12521. LICENSE REQUIRED; LICENSEE TITLE

1. **License required.** A person may not practice naturopathic medicine or profess to be a naturopathic doctor in this State unless that person holds a current, valid license from the board to practice naturopathic medicine.

[1995, c. 671, §13 (NEW) .]

2. **Title.** A licensee must use the title "naturopathic doctor." Naturopathic doctors have the exclusive right to the use of the terms "naturopathic doctor," "naturopathic," "naturopath," "doctor of naturopathic medicine," "doctor of naturopathy," "naturopathic medicine," "naturopathic health care," "naturopathy" and the recognized abbreviation "N.D." Use of the title "physician" by the licensee is prohibited.

[1997, c. 210, §13 (AMD) .]

SECTION HISTORY
1995, c. 671, §13 (NEW). 1997, c. 210, §13 (AMD).

§12522. SCOPE OF PRACTICE

1. **Medicines and therapies.** A naturopathic doctor may use and order for preventative and therapeutic purposes the following natural medicines and therapies: food, food extracts, vitamins, minerals, enzymes, digestive aids, whole gland thyroid and other natural hormones, plant substances, all homeopathic preparations, immunizations, counseling, hypnotherapy, biofeedback, dietary therapy, naturopathic manipulative therapy, naturopathic physical medicine, therapeutic devices, barrier devices for contraception and office procedures. Naturopathic doctors may also prescribe medications, including natural antibiotics and topical medicines, within the limitations set forth in subsection 4. This subsection may not be construed

to prevent an individual other than a naturopathic doctor from using, ordering or recommending any of the above listed items as long as the individual is not prohibited from doing so by any other federal or state statute or regulation.

[1995, c. 671, §13 (NEW) .]

2. **Diagnostic procedures.** A naturopathic doctor may use physical examinations for diagnostic purposes including phlebotomy, clinical laboratory tests, speculum examinations and physiological function tests, excluding all endoscopies and physiological function tests requiring infusion, injection, inhalation or ingestion of medications to perform tests. A naturopathic doctor may order ultrasound, x-ray and electrocardiogram tests but must refer to an appropriate licensed health care professional for conducting and interpreting the tests.

[1995, c. 671, §13 (NEW) .]

3. **Other devices and procedures.** A naturopathic doctor may prescribe therapeutic devices or use noninvasive diagnostic procedures commonly used by allopathic or osteopathic physicians in general practice.

[1995, c. 671, §13 (NEW) .]

4. **Prescriptive authority.** Naturopathic doctors have a limited scope of prescriptive authority.

A. A naturopathic doctor may prescribe nonprescription medications without limitation. [1995, c. 671, §13 (NEW).]

B. A naturopathic doctor may only prescribe noncontrolled legend drugs from the following categories: homeopathic remedies, vitamins and minerals, hormones, local anesthesia and immunizations that are designated by rule by a subcommittee of the board consisting of the naturopathic members, the pharmacist member and the allopathic or osteopathic physician member, as consistent with a naturopathic doctor's education and training. A naturopathic doctor may not prescribe psychotropic medications. [1995, c. 671, §13 (NEW).]

C. Prior to independently prescribing noncontrolled legend drugs, a naturopathic doctor shall establish and complete a 12-month collaborative relationship with a licensed allopathic or osteopathic physician to review the naturopathic doctor's prescribing practices. The board shall further define the terms of the collaborative relationship by rule. [1995, c. 671, §13 (NEW).]

[1995, c. 671, §13 (NEW) .]

5. **Prohibition.** A naturopathic doctor may not:

A. Prescribe, dispense or administer any substance or device identified in Schedule I, II, III, IV or V as described in the federal Controlled Substance Act, 21 United States Code, Sections 801 to 971 (1988), or any controlled substances or devices; [1995, c. 671, §13 (NEW).]

B. Perform surgical procedures except those office procedures authorized by this chapter; [1995, c. 671, §13 (NEW).]

C. Practice emergency medicine except when a good Samaritan rendering gratuitous services in the case of emergency and except for the care of minor injuries; or [1995, c. 671, §13 (NEW).]

D. Practice or claim to practice medicine and surgery, osteopathy, dentistry, podiatry, optometry, chiropractic, physical therapy or any other system or method of treatment not authorized in this chapter. [1995, c. 671, §13 (NEW).]

[1995, c. 671, §13 (NEW) .]

SECTION HISTORY
1995, c. 671, §13 (NEW).

§12523. APPLICATION

This chapter is not intended to prohibit or restrict: [1995, c. 671, §13 (NEW).]

1. **Practice within authorized scope of practice.** The practice of a profession by individuals who are licensed, certified or registered under other laws of this State and are performing services within the authorized scope of practice;

[1995, c. 671, §13 (NEW) .]

2. **Individual performing duties prescribed by federal laws.** The practice of naturopathic medicine by an individual employed by the Federal Government while the individual is engaged in the performance of duties prescribed by the laws and regulations of the United States;

[1995, c. 671, §13 (NEW) .]

3. **Duly licensed elsewhere.** The practice by a naturopathic doctor duly licensed in another state, territory or the District of Columbia when that naturopathic doctor is incidentally called into this State for consultation with a licensed doctor; or

[1995, c. 671, §13 (NEW) .]

4. **Students.** The practice of naturopathic medicine by students enrolled in an approved naturopathic medical college. Services must be performed pursuant to a course of instruction or assignments from an instructor and under the supervision of the instructor. The instructor must be a naturopathic doctor licensed pursuant to this chapter.

[1995, c. 671, §13 (NEW) .]

SECTION HISTORY
1995, c. 671, §13 (NEW).

§12524. PUBLIC HEALTH AUTHORITY AND RESPONSIBILITY

A naturopathic doctor is a licensed doctor and has the same authority and responsibility as other licensed doctors regarding public health laws, reportable disease and conditions, communicable disease control and prevention, recording of vital statistics, health and physical examinations and local boards of health, except that this authority is limited to activity consistent with the scope of practice authorized by this chapter. [1995, c. 671, §13 (NEW).]

SECTION HISTORY
1995, c. 671, §13 (NEW).

§12525. QUALIFICATION FOR LICENSURE

1. **Qualification for licensure.** To be eligible for a license to practice naturopathic medicine, the applicant must:

A. Be a graduate of an approved naturopathic medical college and pass or have passed a competency-based examination approved by the board, covering the appropriate naturopathic subjects, including basic and clinical sciences; [1995, c. 671, §13 (NEW).]

B. [2007, c. 402, Pt. AA, §9 (RP).]

B-1. Be trustworthy and competent; [2007, c. 402, Pt. AA, §9 (NEW).]

C. Be physically and mentally capable of safely practicing naturopathic medicine with or without reasonable accommodation; [1995, c. 671, §13 (NEW).]

D. Have had no license to practice naturopathic medicine refused, revoked or suspended by any other state or country for reasons that relate to the applicant's ability to skillfully and safely practice naturopathic medicine unless that license has been restored to good standing by that state or country; and [1995, c. 671, §13 (NEW).]

E. File an application and pay the licensing fees established under section 12526. [2003, c. 666, §7 (AMD).]

[2007, c. 402, Pt. AA, §9 (AMD) .]

2. **Conditional licensure.**

[2007, c. 402, Pt. AA, §9 (RP) .]

3. **Naturopathic acupuncture specialty certification.** In order to practice naturopathic acupuncture, a naturopathic doctor must obtain a naturopathic acupuncture specialty certification from the board. The board may issue this specialty certification to a naturopathic doctor who has:

A. Submitted an application and a certification fee established under section 12526; [2003, c. 666, §8 (AMD).]

B. Completed an acupuncture program approved by the board that includes 1,000 hours of classroom training and 300 hours of supervised clinical training; and [1995, c. 671, §13 (NEW).]

C. Passed an examination administered by the National Commission for the Certification of Acupuncturists and Oriental Medicine, or its successor or other organization approved by the board. [2007, c. 402, Pt. AA, §9 (AMD).]

[2007, c. 402, Pt. AA, §9 (AMD) .]

4. **Disclosures.** Naturopathic doctors shall:

A. Clearly disclose to each patient and on all printed material that their training is in naturopathic medicine; [1995, c. 671, §13 (NEW).]

B. Openly display their license, attaching renewals and specialty certifications when applicable; and [1995, c. 671, §13 (NEW).]

C. When practicing without malpractice insurance, disclose to each patient that they do not have insurance. [1995, c. 671, §13 (NEW).]

[1995, c. 671, §13 (NEW) .]

SECTION HISTORY
1995, c. 671, §13 (NEW). 2003, c. 666, §§7,8 (AMD). 2007, c. 402, Pt. AA, §9 (AMD).

§12526. FEES, RENEWALS AND CONTINUING EDUCATION

1. **Fees.** The Director of the Office of Professional and Occupational Regulation within the Department of Professional and Financial Regulation may establish by rule fees for purposes authorized under this subchapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for any application may not exceed $200, the fee for initial and renewal licensure may not exceed $675

annually and the fee for initial and renewal specialty certification may not exceed $50 annually. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

[2003, c. 666, §9 (RPR); 2011, c. 286, Pt. B, §5 (REV) .]

2. **Renewal.** A license to practice naturopathic medicine and a specialty certification must be renewed annually and be accompanied by the required renewal fee established in subsection 1.

[2003, c. 666, §10 (AMD) .]

3. **Continuing education.** When renewing a license, a naturopathic doctor must certify to successful completion of continuing education. The minimum continuing education requirement for license renewal is 25 hours annually, at least 7 hours of which must be in pharmacology. Naturopathic doctors who possess a certification in naturopathic acupuncture must complete an additional 15 hours of board-approved continuing education annually, specific to that specialty. The board may further define and implement these continuing education requirements through rulemaking.

[2007, c. 402, Pt. AA, §10 (AMD) .]

SECTION HISTORY
1995, c. 671, §13 (NEW). 1999, c. 257, §7 (AMD). 2003, c. 666, §§9,10 (AMD). 2007, c. 402, Pt. AA, §10 (AMD). 2011, c. 286, Pt. B, §5 (REV).

Chapter 114: REAL ESTATE BROKERAGE LICENSE ACT

Subchapter 1: GENERAL PROVISIONS
HEADING: PL 1987, C. 395, PT. A, §212 (NEW)

§13001. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1987, c. 395, Pt. A, §212 (NEW).]

1. **Real estate.** "Real estate" means all estates and lesser interests in land and an existing business if real estate is a part of the business.

[1987, c. 395, Pt. A, §212 (NEW) .]

1-A. **Commission.** "Commission" means the Real Estate Commission.

[2007, c. 402, Pt. BB, §1 (NEW) .]

1-B. **Director.** "Director" means the director of the Real Estate Commission.

[2007, c. 402, Pt. BB, §2 (NEW) .]

2. **Real estate brokerage.** "Real estate brokerage" means a single instance of offering, attempting to conduct or conducting services on behalf of another for compensation, or with the expectation of receiving compensation, calculated to result in the transfer of an interest in real estate. Real estate brokerage includes, but is not limited to, the following activities conducted in behalf of another:

A. Listing real estate for sale or exchange; [1987, c. 395, Pt. A, §212 (NEW).]

B. Promoting the purchase, sale or exchange of real estate; [1987, c. 395, Pt. A, §212 (NEW).]

C. Procuring of prospects calculated to result in the purchase, sale or exchange of real estate; [1987, c. 395, Pt. A, §212 (NEW).]

D. Advertising or holding oneself out as offering any services described in this subsection; [1987, c. 395, Pt. A, §212 (NEW).]

E. Negotiating the purchase, sale or exchange of real estate; [1987, c. 395, Pt. A, §212 (NEW).]

F. Buying options on real estate or selling real estate options or the real estate under option; [1987, c. 395, Pt. A, §212 (NEW).]

G. Acting as a finder to facilitate the purchase, sale or exchange of real estate; and [1987, c. 395, Pt. A, §212 (NEW).]

H. Buying, selling or exchanging real estate. [1987, c. 395, Pt. A, §212 (NEW).]

[1987, c. 395, Pt. A, §212 (NEW) .]

SECTION HISTORY
1987, c. 395, §A212 (NEW). 2007, c. 402, Pt. BB, §§1, 2 (AMD).

§13002. EXCEPTIONS TO BROKERAGE

Real estate brokerage does not include the following: [1991, c. 53, §1 (AMD).]

1. **Transactions by owner or lessor.** Transactions conducted by any person who is the owner or lessor of the real estate, or to their regular employees with regard to the employer's real estate, provided that:

A. The real estate transaction services rendered by the employee are performed as an incident to the usual duties performed for the employer; or [1989, c. 471, §1 (NEW).]

B. The real estate transaction services are subject to the provisions of the Maine Condominium Act, Title 33, chapter 31; [1997, c. 209, §1 (AMD).]

[1997, c. 209, §1 (AMD) .]

2. **Transactions by attorneys-at-law.** Transactions conducted by an attorney-at-law in the performance of duties as an attorney-at-law. This exception does not apply to attorneys who are regularly engaged in real estate brokerage;

[1999, c. 129, §1 (AMD); 1999, c. 129, §16 (AFF) .]

3. **Exception.** Any person licensed as an auctioneer under chapter 5, hired to call bids at an auction, if the person employed does not prepare contracts or otherwise control the actual sale or take custody of any part of the purchase price; and

[1999, c. 129, §2 (AMD); 1999, c. 129, §16 (AFF) .]

4. **Time share.** Real estate transaction services subject to the provisions of Title 33, chapter 10-A.

[1999, c. 129, §3 (NEW); 1999, c. 129, §16 (AFF) .]

SECTION HISTORY
1987, c. 395, §A212 (NEW). 1989, c. 471, §1 (AMD). 1991, c. 53, §1 (AMD). 1997, c. 209, §1 (AMD). 1999, c. 129, §§1-3 (AMD). 1999, c. 129, §16 (AFF).

§13003. LICENSE REQUIRED

It is unlawful for any person or entity to engage in real estate brokerage without a current real estate brokerage agency license issued under this chapter or a license authorizing the person to engage in brokerage activity on behalf of a brokerage agency. [1987, c. 395, Pt. A, §212 (NEW).]

SECTION HISTORY
1987, c. 395, §A212 (NEW).

§13004. CIVIL ACTIONS

No person or entity may bring or maintain any action in the courts of this State for the collection of compensation for real estate brokerage services, without first proving that the person or entity was properly licensed by the Real Estate Commission at the time the cause of action arose. [1987, c. 395, Pt. A, §212 (NEW).]

SECTION HISTORY
1987, c. 395, §A212 (NEW).

§13005. PENALTIES

A person or entity who violates any provision of this chapter commits a civil violation for which a forfeiture of not more than $2,000 for each violation may be adjudged, plus the amount of compensation received in the subject transaction. Any officer or agent of an entity who personally participates in or is

accessory to a violation of this chapter is subject to the penalties prescribed under this section. Any court of competent jurisdiction has full power to try any violation of this chapter and, upon conviction, the court may at its discretion revoke or suspend the license of the person or entity so convicted. All fines and penalties over and above the cost of court proceedings inure to the commission. A violation of this chapter includes performing or attempting to perform those acts that constitute prohibited practices. [2001, c. 421, Pt. B, §101 (AMD); 2001, c. 421, Pt. C, §1 (AFF).]

The State may bring an action in Superior Court to enjoin any person from violating this chapter, regardless of whether other administrative, civil or criminal proceedings have been or may be instituted. [2001, c. 421, Pt. B, §101 (AMD); 2001, c. 421, Pt. C, §1 (AFF).]

SECTION HISTORY
1987, c. 395, §A212 (NEW). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2001, c. 421, §B101 (AMD). 2001, c. 421, §C1 (AFF).

§13006. CONFIDENTIALITY

All hearings and records of hearings conducted by the grievance committee or the professional standards committee of any state or regional professional real estate association or board are confidential and are exempt from discovery. [1989, c. 82, (NEW).]

SECTION HISTORY
1989, c. 82, (NEW).

§13007. FEES

The Director of the Office of Professional and Occupational Regulation within the Department of Professional and Financial Regulation may establish by rule fees for purposes authorized under this chapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for any one purpose may not exceed $100. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [2007, c. 402, Pt. BB, §3 (NEW); 2011, c. 286, Pt. B, §5 (REV).]

SECTION HISTORY
2007, c. 402, Pt. BB, §3 (NEW). 2011, c. 286, Pt. B, §5 (REV).

Subchapter 2: COMMISSION HEADING: PL 1987, C. 395, PT. A, §212 (NEW)

§13061. DECLARATION OF POLICY

It is declared to be the policy of the State that licensees shall be supervised by the Real Estate Commission in a manner to ensure that they meet standards which will promote public understanding and confidence in the business of real estate brokerage. [1987, c. 395, Pt. A, §212 (NEW).]

SECTION HISTORY
1987, c. 395, §A212 (NEW).

§13062. REAL ESTATE COMMISSION; ORGANIZATION

1. **Real Estate Commission composition.** The Real Estate Commission, established by Title 5, section 12004-A, subsection 37, consists of 4 industry members and 2 public members as defined in Title 5, section 12004-A.

[2007, c. 402, Pt. BB, §4 (AMD) .]

2. **Qualifications.** Each industry member of the commission must have been a real estate broker or associate broker by vocation in this State for at least 5 years prior to appointment.

[2007, c. 402, Pt. BB, §4 (AMD) .]

3. **Geographic distribution.**

[2007, c. 402, Pt. BB, §4 (RP) .]

4. **Terms; removal.** Terms of the members of the commission are for 3 years. Members may be removed by the Governor for cause.

[1993, c. 600, Pt. A, §266 (AMD) .]

5. **Quorum; procedure.**

[2013, c. 246, Pt. B, §23 (RP) .]

6. **Appointments.** The members of the commission are appointed by the Governor. Appointments of members must comply with Title 10, section 8009.

[2007, c. 402, Pt. BB, §4 (AMD) .]

7. **Chair.** The commission shall annually elect a chair from its members.

[1993, c. 600, Pt. A, §266 (AMD) .]

SECTION HISTORY
1987, c. 395, §A212 (NEW). 1989, c. 471, §2 (AMD). 1989, c. 503, §B156 (AMD). 1989, c. 878, §§A100,B30 (AMD). 1991, c. 53, §2 (AMD). 1991, c. 53, §10 (AFF). 1993, c. 600, §A266 (AMD). 1997, c. 727, §§C12-14 (AMD). 2007, c. 402, Pt. BB, §4 (AMD). 2013, c. 246, Pt. B, §23 (AMD).

§13063. COMPENSATION

(REPEALED)

SECTION HISTORY
1987, c. 395, §A212 (NEW). 2007, c. 402, Pt. BB, §5 (RP).

§13064. SEAL; EVIDENCE; INSPECTION OF RECORDS

(REPEALED)

SECTION HISTORY
1987, c. 395, §A212 (NEW). 2007, c. 402, Pt. BB, §6 (RP).

§13065. RULES

The commission may establish guidelines and rules by which this chapter shall be administered. Rules shall be subject to the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter II and consistent with the law to govern the following. [1987, c. 395, Pt. A, §212 (NEW).]

1. **Adjudicatory hearings.**

[2007, c. 402, Pt. BB, §7 (RP) .]

2. **Investigations.**

[2007, c. 402, Pt. BB, §8 (RP) .]

3. **Brokerage practice.** The commission may adopt rules consistent with the standards set forth in this chapter governing real estate brokerage practices in order to establish standards of practice which serve the interests of both the public and the industry.

[1987, c. 395, Pt. A, §212 (NEW) .]

4. **License qualifications.** The commission may adopt rules relating to the qualifications and application for any license authorized under this chapter as are deemed necessary to assure that applicants are sufficiently trustworthy and competent to transact the business for which they will be licensed.

[1987, c. 395, Pt. A, §212 (NEW) .]

5. **Fees.**

[2007, c. 402, Pt. BB, §9 (RP) .]

6. **Education.** The commission may adopt rules to be applied in determining whether educational programs meet the license qualifications required under this chapter.

[1987, c. 395, Pt. A, §212 (NEW) .]

7. **Supervision of employees.** The commission shall adopt rules defining the authority and responsibility of designated brokers in supervising sales agents, as well as other brokerage related employees and independent contractors.

[1987, c. 395, Pt. A, §212 (NEW) .]

8. **Other.** The commission may adopt and enforce such other rules as are necessary for the performance of its duties under this chapter.

[1987, c. 395, Pt. A, §212 (NEW) .]

SECTION HISTORY
1987, c. 395, §A212 (NEW). 1997, c. 209, §2 (AMD). 2007, c. 402, Pt. BB, §§7-9 (AMD).

§13066. HEARINGS

(REPEALED)

SECTION HISTORY
1987, c. 395, §A212 (NEW). 1999, c. 129, §4 (AMD). 1999, c. 129, §16 (AFF). 2007, c. 402, Pt. BB, §10 (RP).

§13067. CAUSES FOR DISCIPLINARY ACTION

(REPEALED)

SECTION HISTORY
1987, c. 395, §A212 (NEW). 1991, c. 53, §§3-5 (AMD). 1999, c. 129, §5 (AMD). 1999, c. 129, §16 (AFF). 2007, c. 402, Pt. BB, §11 (RP).

§13067-A. DENIAL OR REFUSAL TO RENEW LICENSE; DISCIPLINARY ACTION

In addition to the grounds enumerated in Title 10, section 8003, subsection 5-A, paragraph A, the commission may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A for: [2007, c. 402, Pt. BB, §12 (NEW).]

1. **Lack of trustworthiness.** Lack of trustworthiness and competence to transact real estate brokerage services in such manner as to safeguard the interests of the public;

[2007, c. 402, Pt. BB, §12 (NEW) .]

2. **Misconduct.** Any act or conduct, whether of the same or different character than specified in this chapter, that constitutes or demonstrates bad faith, incompetency, untrustworthiness or dishonest, fraudulent or improper dealings;

[2007, c. 402, Pt. BB, §12 (NEW) .]

3. **Act that constitutes grounds for denial.** Performing or attempting to perform any act or acts for which a license may lawfully be denied to any applicant;

[2007, c. 402, Pt. BB, §12 (NEW) .]

4. **Substantial misrepresentation.** Making any substantial misrepresentation by omission or commission, but not including innocent misrepresentation;

[2007, c. 402, Pt. BB, §12 (NEW) .]

5. **Failure to protect principal.** Failing to act in a reasonably prudent manner in order to protect and promote the interests of the principal with absolute fidelity;

[2007, c. 402, Pt. BB, §12 (NEW) .]

6. **Failure to avoid error, exaggeration or concealment.** Failing to act in a reasonably prudent manner in order to avoid error, exaggeration or concealment of pertinent information;

[2007, c. 402, Pt. BB, §12 (NEW) .]

7. **Liability of agency and designated broker.** Violation of this chapter by a licensed or unlicensed person acting on the agency's behalf if:

A. The designated broker had prior knowledge and did not take reasonable action to prevent the violation; [2007, c. 402, Pt. BB, §12 (NEW).]

B. The designated broker permitted or authorized a person to engage in activity for which that person was not properly licensed; or [2007, c. 402, Pt. BB, §12 (NEW).]

C. The designated broker failed to exercise a reasonable degree of supervision over employees and independent contractors commensurate with their qualifications and experience; [2007, c. 402, Pt. BB, §12 (NEW).]

[2007, c. 402, Pt. BB, §12 (NEW) .]

8. **Unlawful payment.** Offering, promising, allowing, giving or paying, directly or indirectly, any part or share of compensation arising or accruing from a real estate brokerage transaction to any person who is not licensed to perform the service for which the person is or would be compensated, if a license is required under this chapter for performance of that service. A licensee may not be employed by or accept brokerage

compensation from any person other than the agency under which the licensee is at the time licensed. An agency may share compensation with a nonresident licensee when the service by the nonresident is performed outside this State;

[2007, c. 402, Pt. BB, §12 (NEW) .]

9. **Suspension or revocation of license.** Having had a professional or occupational license suspended or revoked for disciplinary reasons or an application rejected for reasons related to untrustworthiness within 3 years prior to the date of application; and

[2007, c. 402, Pt. BB, §12 (NEW) .]

10. **Failure to meet professional qualifications; failure to submit complete application.** Failing to meet the professional qualifications for licensure as provided in this subchapter or failing to submit a complete application within 30 days after being notified of the materials needed to complete the application.

[2007, c. 402, Pt. BB, §12 (NEW) .]

SECTION HISTORY
2007, c. 402, Pt. BB, §12 (NEW).

§13068. DECISIONS

1. **Licensing.** After hearing, the commission may affirm, modify or reverse the director's decision to deny an examination, license or renewal license or, in its discretion, file a complaint in the District Court pursuant to Title 4, chapter 5 and Title 5, section 10051 to determine whether a license may be denied.

[1999, c. 547, Pt. B, §75 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

2. **Violation of chapter.** If, after hearing, the commission finds that a violation of this chapter has occurred, it may:

A. Reprimand the person or entity; [1987, c. 395, Pt. A, §212 (NEW).]

B. Require the person or entity to comply with such terms and conditions as it determines necessary to correct the basis for the violation or prevent further violations by issuing a cease and desist order. Violation of a cease and desist order shall constitute a violation of this chapter; [1987, c. 395, Pt. A, §212 (NEW).]

C. Assess the violator a fine of no more than $2,000 a violation; [1987, c. 395, Pt. A, §212 (NEW).]

D. Suspend or revoke any license issued under this chapter; or [1987, c. 395, Pt. A, §212 (NEW).]

E. Report its findings and recommendations to the Attorney General or the district attorney recommending prosecution. [1987, c. 395, Pt. A, §212 (NEW).]

[1987, c. 395, Pt. A, §212 (NEW) .]

3. **Appeals.**

[2007, c. 402, Pt. BB, §13 (RP) .]

Notwithstanding the provisions of Title 10, section 8003, subsection 5-A, revocations ordered by the commission are subject to judicial review exclusively in the Superior Court in accordance with Title 5, chapter 375, subchapter 7. [2007, c. 402, Pt. BB, §13 (NEW).]

SECTION HISTORY
1987, c. 395, §A212 (NEW). 1999, c. 547, §§B75,78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 402, Pt. BB, §13 (AMD).

§13069. DIRECTOR

1. **Appointment.** The Commissioner of Professional and Financial Regulation, with the advice of the Real Estate Commission and subject to the Civil Service Law, shall appoint a director of the commission.

[1987, c. 395, Pt. A, §212 (NEW) .]

2. **Duties.** The director is responsible for the management of the commission's affairs, within the guidelines, policies and rules established by the commission and for carrying out the duties allocated to the director under this chapter. Duties of the director may be carried out by the director's designee, other than a member of the commission.

[1987, c. 395, Pt. A, §212 (NEW) .]

3. **Employees.**

[1999, c. 687, Pt. F, §8 (RP) .]

4. **Disposal of fees; expenses.**

[1995, c. 502, Pt. H, §44 (RP) .]

4-A. **Real estate account.**

[2007, c. 402, Pt. BB, §14 (RP) .]

5. **Advocate.** The director shall seek to protect the interests of the public and the industry in the administration of this chapter. In this capacity, the director may serve as an advocate in any proceeding before the commission, presenting evidence and argument in support of a recommended disposition.

[1987, c. 395, Pt. A, §212 (NEW) .]

6. **Investigations.** The director may investigate the actions of any licensee under this chapter, or any person or entity who assumes to act in a capacity requiring a license under this chapter, upon receipt of a verified written complaint or in accordance with the guidelines prescribed by commission rule. Upon completion of the investigation, the director shall take one of the following actions:

A. With the commission's approval, dismiss the complaint; [1999, c. 129, §6 (AMD); 1999, c. 129, §16 (AFF).]

B. With the consent of the parties and subject to approval of the commission and commission counsel, execute a consent agreement; or [1987, c. 395, Pt. A, §212 (NEW).]

C. Issue a staff petition for hearing before the commission, which may include a recommended disposition. [1987, c. 395, Pt. A, §212 (NEW).]

[2007, c. 402, Pt. BB, §15 (AMD) .]

7. **Subpoenas.** The director may issue subpoenas to compel the attendance of witnesses at hearings and to compel the production of documents and other records deemed necessary in connection with the administration of this chapter. Whenever a person refuses to obey a subpoena duly issued by the director, the Superior Court for Kennebec County or any court of this State, within the jurisdiction of which the person resides or transacts business, shall have jurisdiction to issue to that person an order requiring him to comply with the subpoena and any failure to obey that order may be punished by the court as contempt. Refusal to obey the director's subpoena also constitutes a violation of this chapter.

[1987, c. 395, Pt. A, §212 (NEW) .]

8. **Denial of licenses.** The director may only issue a license to persons or entities meeting the requirements of this chapter. If it appears to the director that grounds for denial of a license or renewal exists, the director shall deny the license or renewal and notify the applicant in writing of the basis for denial together with notice of the applicant's right to a hearing before the commission, if requested in accordance with commission rules within a 30-day period. The director shall not issue a license to any applicant for renewal if the license has been expired for more than 90 days, unless the applicant passes the license examination designated by commission rule for this purpose.

[1987, c. 395, Pt. A, §212 (NEW) .]

SECTION HISTORY
1987, c. 395, §A212 (NEW). 1995, c. 502, §§H43-45 (AMD). 1999, c. 129, §6 (AMD). 1999, c. 129, §16 (AFF). 1999, c. 687, §§F8,9 (AMD). 2007, c. 402, Pt. BB, §§14, 15 (AMD).

Subchapter 3: REAL ESTATE BROKERAGE AGENCY
HEADING: PL 1987, C. 395, PT. A, §212 (NEW)

§13171. REAL ESTATE BROKERAGE AGENCY

As used in this chapter, except for subchapter 7, "real estate brokerage agency" or "agency" means any person or entity engaged in real estate brokerage services through its designated broker, associates or employees and licensed by the commission as a real estate brokerage agency. [2005, c. 378, §2 (AMD); 2005, c. 378, §29 (AFF).]

SECTION HISTORY
1987, c. 395, §A212 (NEW). 2005, c. 378, §2 (AMD). 2005, c. 378, §29 (AFF).

§13172. ORIGINAL APPLICATION

Each applicant for an original agency license shall submit an application, signed by the authorized agency official, together with the fee as set under section 13007. [2007, c. 402, Pt. BB, §16 (AMD).]

SECTION HISTORY
1987, c. 395, §A212 (NEW). 2007, c. 402, Pt. BB, §16 (AMD).

§13173. AGENCY LICENSE QUALIFICATIONS

1. **Designated broker.** The owner or a duly authorized agency official shall hold a Maine real estate broker license and be designated by the agency to act for it in the conduct of real estate brokerage.

[1987, c. 395, Pt. A, §212 (NEW) .]

2. **Employees.** Every person employed by or on behalf of the agency in the performance of real estate brokerage shall be properly licensed under this chapter.

[1987, c. 395, Pt. A, §212 (NEW) .]

3. **Reputation.** The agency and its owner or principal officers, if previously engaged in any business, shall bear a good reputation for honesty, truthfulness, fair dealing and competency.

[1987, c. 395, Pt. A, §212 (NEW) .]

4. **Nonresidents.** The following applies to nonresidents.

A. Nonresident applicants shall hold a similar license in good standing and maintain an active place of business in its resident jurisdiction. [1987, c. 395, Pt. A, §212 (NEW).]

B. [2013, c. 217, Pt. K, §6 (RP).]

[2013, c. 217, Pt. K, §6 (AMD) .]

5. **Place of business.** Every agency holding an active license shall maintain a fixed and definite place of business where its designated broker and employees may be personally contacted without unreasonable delay.

[1987, c. 395, Pt. A, §212 (NEW) .]

6. **Branch office.** Other locations that are advertised as locations where the public may contact the agency or its employees concerning brokerage services must be licensed as a branch office.

[2011, c. 286, Pt. J, §1 (AMD) .]

SECTION HISTORY
1987, c. 395, §A212 (NEW). 1999, c. 129, §7 (AMD). 1999, c. 129, §16 (AFF). 2011, c. 286, Pt. J, §1 (AMD). 2013, c. 217, Pt. K, §6 (AMD).

§13174. LICENSE DENIAL

A license may be denied to any agency applicant: [1987, c. 395, Pt. A, §212 (NEW).]

1. **Complete and accurate application.** Who fails to submit a complete and accurate application;

[1987, c. 395, Pt. A, §212 (NEW) .]

2. **Proof of qualifications.** Who fails to submit satisfactory proof that it has met the qualifications specified in this chapter and is sufficiently trustworthy and competent to transact real estate brokerage services in such a manner as to safeguard the interests of the public;

[1987, c. 395, Pt. A, §212 (NEW) .]

3. **Conviction of crime.** Subject to Title 5, chapter 341, if the owner or principal entity officials have been convicted of any Class A, B or C crime or any crime which bears directly on the practice of real estate brokerage; or

[1987, c. 395, Pt. A, §212 (NEW) .]

4. **Revocation of license.** If the agency and its owner or its principal officers have had any professional or occupational license revoked for disciplinary reasons, or an application rejected for reasons relating to untrustworthiness, within 3 years prior to the date of application.

[1987, c. 395, Pt. A, §212 (NEW) .]

SECTION HISTORY
1987, c. 395, §A212 (NEW).

§13175. AGENCY CHANGES

Any change of address, name or other material changes in the conditions or qualifications set forth in the original application must be reported to the director no later than 10 days after the change. Upon application and payment of the fee as set under section 13007, the commission records must be changed and a new license must be issued for the unexpired term of the current license, if appropriate. [2007, c. 402, Pt. BB, §17 (AMD).]

SECTION HISTORY
1987, c. 395, §A212 (NEW). 2007, c. 402, Pt. BB, §17 (AMD).

§13176. TRADE NAMES

Agencies may conduct business under a trade name, provided that their license is issued under the trade name. If an agency is licensed with a trade name, that trade name shall be used by the agency, its employees and independent contractors in all real estate brokerage related advertising. The director may refuse to issue a license under a specific trade name if the name is deemed to be misleading, deceptive or will likely result in confusion with other existing businesses. [1987, c. 395, Pt. A, §212 (NEW).]

SECTION HISTORY
1987, c. 395, §A212 (NEW).

§13177. REAL ESTATE BROKERAGE CONTRACTS

(REPEALED)

SECTION HISTORY
1987, c. 395, §A212 (NEW). 1999, c. 129, §8 (AMD). 1999, c. 129, §16 (AFF). 2005, c. 378, §29 (AFF). 2005, c. 378, §3 (RP).

§13177-A. BROKERAGE AGREEMENTS

1. **Definitions.** As used in this section, "brokerage agreement," "real estate brokerage agency" and "client" have the same meanings as in section 13271.

[2005, c. 378, §4 (NEW); 2005, c. 378, §29 (AFF) .]

2. **Written agreements.** A brokerage agreement between a real estate brokerage agency and a client must be in writing and, at a minimum, include the following:

A. The signature of the client to be charged; [2005, c. 378, §4 (NEW); 2005, c. 378, §29 (AFF).]

B. The terms and conditions of the brokerage services to be provided; [2005, c. 378, §4 (NEW); 2005, c. 378, §29 (AFF).]

C. The method or amount of compensation to be paid; [2011, c. 286, Pt. J, §2 (AMD).]

D. The date upon which the agreement will expire; and [2011, c. 286, Pt. J, §2 (AMD).]

E. A statement that the agreement creates an agency-client relationship. [2011, c. 286, Pt. J, §2 (NEW).]

A brokerage agreement may not be enforced against any client who in good faith subsequently engages the services of another real estate brokerage agency following the expiration date of the first brokerage agreement. Any brokerage agreement provision extending a real estate brokerage agency's right to a fee following expiration of the brokerage agreement may not extend that right beyond 6 months.

[2011, c. 286, Pt. J, §2 (AMD) .]

SECTION HISTORY
2005, c. 378, §4 (NEW). 2005, c. 378, §29 (AFF). 2011, c. 286, Pt. J, §2 (AMD).

§13178. TRUST ACCOUNTS

Every agency shall maintain a federally insured account or accounts in a financial institution authorized to do business in this State, as defined in Title 9-B, section 131, subsection 17-A, or a credit union authorized to do business in this State, as defined in Title 9-B, section 131, subsection 12-A, for the sole purpose of depositing all earnest money deposits and all other money held by it as an agency in which its clients or other persons with whom it is dealing have an interest. The trust account and withdrawal orders, including all checks drawn on the account, must name the subject agency and be identified as a real estate trust account. Real estate trust accounts must be free from trustee process, except by those persons for whom the brokerage agency has made the deposits and then only to the extent of the interest. The designated broker, except for an amount necessary to maintain the accounts not to exceed an amount prescribed by commission rule, shall withdraw from the accounts all fees due within 30 days after but not until consummation or termination of the transaction when the designated broker makes or causes to be made a full accounting to the broker's principal. The designated broker shall maintain trust accounts and supporting records in a manner prescribed by commission rule. These accounts and records must be open for inspection by the director or the director's authorized representative at the agency's place of business during generally recognized business hours. Upon order of the director, the designated broker shall authorize the director in writing to confirm the balance of funds held in all agency trust accounts. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2005, c. 378, §5 (AMD); 2005, c. 378, §29 (AFF).]

SECTION HISTORY
1987, c. 395, §A212 (NEW). 2005, c. 378, §5 (AMD). 2005, c. 378, §29 (AFF).

§13179. SUPERVISION OF EMPLOYEES

The designated broker shall exercise a reasonable level of supervision commensurate with the level of qualification and experience of agency employees and independent contractors supervised, in order to protect and promote the interests of its clients with absolute fidelity. The designated broker shall not permit or authorize any person to engage in any activity for which they are not properly licensed. [1987, c. 395, Pt. A, §212 (NEW).]

SECTION HISTORY
1987, c. 395, §A212 (NEW).

§13180. TERMINATION OF EMPLOYMENT

When any broker, associate broker or real estate sales agent is discharged or terminates his employment with a brokerage agency, it shall be the duty of the designated broker to immediately deliver the license of the broker, associate broker or real estate sales agent to the commission. The designated broker shall simultaneously address a communication to the last known address advising the broker, associate broker or sales agent that his license has been delivered or mailed to the commission. A copy of the communication shall accompany the license when delivered to the commission. [1987, c. 395, Pt. A, §212 (NEW).]

Upon receipt of the notice of termination by the licensee, the license shall become void and may only be reinstated or placed on inactive status after proper application and payment of the prescribed fee. It is unlawful for any broker, associate broker or real estate sales agent to perform any brokerage services without first receiving a new active license. [1987, c. 395, Pt. A, §212 (NEW).]

SECTION HISTORY
1987, c. 395, §A212 (NEW).

§13181. CONTENTS; DISPLAY

The director shall issue to each agency a license in the form and size prescribed by the Commissioner of Professional and Financial Regulation. The license of each broker, associate broker and sales agent must be delivered or mailed to the designated broker and be kept in the custody and control of the designated broker. It is the duty of the designated broker to conspicuously display the agency license in the broker's place of business. [2007, c. 402, Pt. BB, §18 (AMD).]

SECTION HISTORY
1987, c. 395, §A212 (NEW). 2007, c. 402, Pt. BB, §18 (AMD).

§13182. AGENCY LICENSE RENEWAL

Agency licenses expire on December 31st, or at such times as the Commissioner of Professional and Financial Regulation may designate, of each biennial period for which it was issued. Upon application and payment of the fee as set under section 13007, a renewal license is issued for each ensuing biennial period in the absence of any reason or condition that might warrant denial of a license. The suspension, revocation or expiration of an agency or designated broker's license automatically suspends every license granted to any person by virtue of the person's employment by the agency whose license has been suspended, revoked or expired pending a change of employer and the issuance of a new license. The new license is issued without charge if granted during the same biennial period in which the original was granted. [2007, c. 402, Pt. BB, §19 (AMD).]

SECTION HISTORY
1987, c. 395, §A212 (NEW). 2007, c. 402, Pt. BB, §19 (AMD).

§13183. ACTS AUTHORIZED

An agency, through its designated broker, may perform all of the brokerage services contemplated by this chapter and may employ or retain others to perform brokerage services on behalf of the agency. The designated broker may also delegate any of his duties and authority provided for under this chapter, but when doing so shall not be relieved of any responsibility imposed by this chapter. [1987, c. 395, Pt. A, §212 (NEW).]

SECTION HISTORY
1987, c. 395, §A212 (NEW).

§13184. REAL ESTATE BROKERAGE RECORDS; RETENTION

A designated broker shall maintain complete and adequate records of all real estate brokerage activity conducted on behalf of the broker's agency. The commission shall specify by rule the records required to establish complete and adequate records, including retention schedules. The records must be open for inspection by the director or the director's authorized representative at the agency's place of business during generally recognized business hours. [2005, c. 378, §6 (NEW); 2005, c. 378, §29 (AFF).]

SECTION HISTORY
2005, c. 378, §6 (NEW). 2005, c. 378, §29 (AFF).

Subchapter 4: BROKERS, ASSOCIATE BROKERS, SALES AGENTS AND TIMESHARE AGENTS HEADING: PL 1987, C. 395, PT. A, §212 (NEW)

§13191. GENERAL QUALIFICATIONS

1. **Application.** Applicants must submit an application together with the fee as set under section 13007.

[2007, c. 402, Pt. BB, §20 (AMD) .]

2. **Age.** The applicant shall have reached his 18th birthday at the time of his application.

[1987, c. 395, Pt. A, §212 (NEW) .]

3. **Residence.** The applicant shall provide evidence of his legal residence.

[1987, c. 395, Pt. A, §212 (NEW) .]

4. **High school.** The applicant shall be a high school graduate or hold an equivalency certificate.

[1987, c. 395, Pt. A, §212 (NEW) .]

5. **Reputation.** The applicant must have a good reputation for honesty, truthfulness, fair dealing and competency.

[2013, c. 217, Pt. J, §5 (AMD) .]

6. **Active license.** Upon application for an active license, the applicant shall provide a written statement from the designated broker of the agency, who will be employing the applicant, authorizing issuance of the applicant's license under the agency.

[1987, c. 395, Pt. A, §212 (NEW) .]

7. **Single license.** No more than one license may be issued to any person for the same period of time. In the event of a change in an employer, another license shall not be issued until the current license has been returned or for which a satisfactory accounting has been made.

[1987, c. 395, Pt. A, §212 (NEW) .]

SECTION HISTORY
1987, c. 395, §A212 (NEW). 2007, c. 402, Pt. BB, §§20, 21 (AMD). 2013, c. 217, Pt. J, §5 (AMD).

§13192. LICENSE DENIAL

(REPEALED)

SECTION HISTORY
1987, c. 395, §A212 (NEW). 1991, c. 53, §§6,7 (AMD). 2007, c. 402, Pt. BB, §22 (RP).

§13193. NONRESIDENTS

In lieu of education and experience requirements, nonresident original license applicants must hold a similar active license in good standing in their place of legal residence and shall appear at such time and place as the director may designate for the purpose of written examination pertaining to Maine real estate laws. [2013, c. 217, Pt. K, §7 (AMD).]

SECTION HISTORY
1987, c. 395, §A212 (NEW). 2013, c. 217, Pt. K, §7 (AMD).

§13194. LICENSE RENEWAL

Licenses expire on December 31st, or at such other times as the Commissioner of Professional and Financial Regulation may designate, of each biennial period for which it was issued, except those licenses issued under section 13200. The director shall issue a renewal license for each ensuing biennial period in the absence of any reason or condition that might warrant the refusal of granting a license, upon receipt of the written request of the applicant, the biennial fee as set under section 13007 for the license and upon the applicant presenting evidence of compliance with the requirements of section 13197. The director shall deny a renewal license to any applicant whose license has lapsed for more than 90 days, unless the renewal license applicant passes the license examination designated by commission rule for this purpose. [2007, c. 402, Pt. BB, §23 (AMD).]

SECTION HISTORY
1987, c. 395, §A212 (NEW). 2007, c. 402, Pt. BB, §23 (AMD).

§13195. CHANGES

Any change of address, name or other material change in the conditions or qualifications set forth in the original application, including but not limited to criminal convictions or suspension or revocation of any professional license, must be reported to the director no later than 10 days after the change. Upon application and payment of the fee as set under section 13007, the commission records must be changed and a new license issued for the unexpired term of the current license, if appropriate. [2007, c. 402, Pt. BB, §24 (AMD).]

SECTION HISTORY
1987, c. 395, §A212 (NEW). 1999, c. 129, §9 (AMD). 1999, c. 129, §16 (AFF). 2007, c. 402, Pt. BB, §24 (AMD).

§13196. INACTIVE LICENSES

1. **Placement on inactive status.** Any licensee who does not desire to perform any of the activities described in section 13001 and who wants to preserve the license while not engaged in any brokerage activity may apply to the commission for inactive status upon payment of the fee as set under section 13007. The

commission may place the license on inactive status and issue an inactive license only upon application by the licensee. During inactive status, the licensee is required to renew the license biennially, but is not required to maintain a place of business or meet the educational provisions of section 13197.

[2007, c. 402, Pt. BB, §25 (AMD) .]

2. **Reinstatement to active status.** Licensees who have remained on inactive status for 6 years or more may have their licenses reinstated to active status by submitting an application and fee and by successfully passing a license examination designated by commission rule for this purpose. Licensees who activate within 6 years of the initial inactive license may activate by successfully completing the designated examination or by completing continuing education courses that meet commission approved clock hours as follows:

A. For those applicants remaining inactive from the issuance of the inactive licenses up to 2 years, 21 clock hours of continuing education completed within the previous biennium; [2005, c. 378, §7 (AMD); 2005, c. 378, §29 (AFF).]

B. For those applicants remaining inactive for more than 2 years but less than 4 years, 28 clock hours of continuing education completed within the previous biennium; or [2005, c. 378, §7 (AMD); 2005, c. 378, §29 (AFF).]

C. For those applicants remaining inactive for more than 4 years but less than 6 years, 36 clock hours of continuing education completed within the previous biennium. [2005, c. 378, §7 (AMD); 2005, c. 378, §29 (AFF).]

[2007, c. 402, Pt. BB, §25 (AMD) .]

SECTION HISTORY
1987, c. 395, §A212 (NEW). 1991, c. 53, §8 (AMD). 1999, c. 129, §16 (AFF). 1999, c. 129, §10 (RPR). 2005, c. 378, §7 (AMD). 2005, c. 378, §29 (AFF). 2007, c. 402, Pt. BB, §25 (AMD).

§13197. CONTINUING EDUCATION

1. **Requirement.** As a prerequisite to renewal of a license, applicants must complete 21 clock hours of continuing education within 2 years prior to the date of application in programs or courses approved by the commission. This requirement does not apply to agency and company licenses.

[2005, c. 378, §8 (AMD); 2005, c. 378, §29 (AFF) .]

2. **Program approval.** Each application for approval of a continuing education program must be submitted according to the guidelines prescribed by the commission, together with the fee as set under section 13007. The fee is retained whether or not the application is approved, except that the commission may waive the application fee for any program or course for the purpose of promoting the intent of this section and that meets the standards prescribed by rule.

[2007, c. 402, Pt. BB, §26 (AMD) .]

3. **Core requirement.** The commission may establish a core educational requirement for each license type, not to exceed 6 clock hours, in which case the remaining requirement shall be fulfilled from elective programs approved by the commission.

[1987, c. 395, Pt. A, §212 (NEW) .]

4. **Voluntary certification program.** The commission may establish a program for recognizing real estate brokers who have advanced education, training and experience in a specialized discipline related to the field of real estate. Standards to be met in order to be certified shall be prescribed by rules adopted by the commission, subject to the Maine Administrative Procedure Act, Title 5, chapter 375.

[1987, c. 395, Pt. A, §212 (NEW) .]

SECTION HISTORY
1987, c. 395, §A212 (NEW). 1999, c. 129, §11 (AMD). 1999, c. 129, §16 (AFF). 2005, c. 378, §8 (AMD). 2005, c. 378, §29 (AFF). 2007, c. 402, Pt. BB, §26 (AMD).

§13198. REAL ESTATE BROKER

1. **Definition.** "Real estate broker" or "broker" means any person employed by or on behalf of an agency to perform brokerage and licensed by the commission as a broker.

[1987, c. 395, Pt. A, §212 (NEW) .]

2. **Professional qualifications.** An applicant for a broker license must meet the qualifications under paragraphs A and B.

A. The applicant must have been licensed as an associate broker affiliated with a real estate brokerage agency for 2 years within the 5 years immediately preceding the date of application. [2009, c. 112, Pt. A, §17 (RPR).]

B. The applicant must satisfactorily complete the course of study meeting guidelines established by the commission. [2009, c. 112, Pt. A, §17 (RPR).]

[2009, c. 112, Pt. A, §17 (RPR) .]

3. **Acts authorized.** Each broker license granted entitles the holder to perform all of the acts contemplated under this chapter on behalf of an agency, including being designated by the agency to act for it or as a branch office manager.

[2007, c. 402, Pt. BB, §27 (AMD) .]

SECTION HISTORY
1987, c. 395, §A212 (NEW). 2007, c. 402, Pt. BB, §27 (AMD). 2009, c. 112, Pt. A, §17 (AMD).

§13199. ASSOCIATE REAL ESTATE BROKER

1. **Definition.** "Associate real estate broker" or "associate broker" means any person employed by or on behalf of an agency to perform real estate brokerage services and licensed by the commission as an associate broker.

[1987, c. 395, Pt. A, §212 (NEW) .]

2. **Professional qualifications.**

[2005, c. 378, §29 (AFF); 2005, c. 378, §9 (RP) .]

2-A. **Professional qualifications.** An applicant for an associate broker license must have been licensed as a real estate sales agent affiliated with a real estate brokerage agency for 2 years within the 5 years immediately preceding the date of application and satisfactorily completed a course of study meeting guidelines established by the commission. The commission may not issue a license under this section until an individual has completed 2 years as a licensed real estate sales agent.

[2009, c. 112, Pt. A, §18 (AMD) .]

3. **Acts authorized.** Each associate broker license granted entitles the holder to perform all of the acts contemplated by this chapter, on behalf of an agency, except serving as a designated broker or a branch office manager.

[2007, c. 402, Pt. BB, §28 (AMD) .]

SECTION HISTORY
1987, c. 395, §A212 (NEW). 1997, c. 209, §3 (AMD). 1999, c. 129, §12 (AMD). 1999, c. 129, §16 (AFF). 2005, c. 378, §§9,10 (AMD). 2005, c. 378, §29 (AFF). 2007, c. 402, Pt. BB, §28 (AMD). 2009, c. 112, Pt. A, §18 (AMD).

§13200. REAL ESTATE SALES AGENT

1. **Definition.** "Real estate sales agent" or "sales agent" means any person employed by or on behalf of an agency to perform real estate brokerage services in a training capacity and licensed by the commission as a sales agent.

[1987, c. 395, Pt. A, §212 (NEW) .]

2. **Professional qualification.** Each applicant for a sales agent license must meet the following qualifications:

A. The applicant must satisfactorily complete a course of study meeting commission established guidelines; and [2005, c. 378, §11 (AMD); 2005, c. 378, §29 (AFF).]

B. The applicant must appear at such time and place as the director may designate for the purpose of a written sales agent examination. [2005, c. 378, §11 (AMD); 2005, c. 378, §29 (AFF).]

[2005, c. 378, §11 (AMD); 2005, c. 378, §29 (AFF) .]

3. **Acts authorized.** Each sales agent license granted shall entitle the holder to perform all brokerage services contemplated by this chapter which are specifically authorized by the designated broker and which are within the guidelines established by the commission for sales agents.

[1987, c. 395, Pt. A, §212 (NEW) .]

4. **License term.** Sales agent licenses shall be issued for 2 years and may not be renewed. A new sales agent license may not be reissued within 5 years following the date the previous sales agent license was issued.

[1987, c. 395, Pt. A, §212 (NEW) .]

5. **Waiver.** The commission may grant waivers to allow individuals to remain licensed as sales agents beyond the 2-year term specified in subsection 4. Waivers shall be granted on the basis of extenuating circumstances as defined by rules promulgated by the commission.

[1987, c. 395, Pt. A, §212 (NEW) .]

SECTION HISTORY
1987, c. 395, §A212 (NEW). 2005, c. 378, §11 (AMD). 2005, c. 378, §29 (AFF).

§13201. TIMESHARE AGENT

(REPEALED)

SECTION HISTORY
1987, c. 395, §A212 (NEW). 1999, c. 129, §16 (AFF). 1999, c. 129, §13 (RP).

Subchapter 5: HOME SERVICE CONTRACTS HEADING: PL 1987, C. 395, PT. A, §212 (NEW); PL 1997, C. 209, §4 (RP)

§13221. DEFINITIONS

(REPEALED)

SECTION HISTORY
1987, c. 395, §A212 (NEW). 1997, c. 209, §4 (RP).

§13222. RULES

(REPEALED)

SECTION HISTORY
1987, c. 395, §A212 (NEW). 1997, c. 209, §4 (RP).

§13223. REVIEW OF DECISIONS

(REPEALED)

SECTION HISTORY
1987, c. 395, §A212 (NEW). 1997, c. 209, §4 (RP).

§13224. LICENSE REQUIRED

(REPEALED)

SECTION HISTORY
1987, c. 395, §A212 (NEW). 1997, c. 209, §4 (RP).

§13225. APPLICATION FOR LICENSE

(REPEALED)

SECTION HISTORY
1987, c. 395, §A212 (NEW). 1989, c. 502, §B39 (AMD). 1997, c. 209, §4 (RP).

§13226. REQUIRED DEPOSIT OR BOND

(REPEALED)

SECTION HISTORY
1987, c. 395, §A212 (NEW). 1997, c. 209, §4 (RP).

§13227. RESERVES

(REPEALED)

SECTION HISTORY
1987, c. 395, §A212 (NEW). 1997, c. 209, §4 (RP).

§13228. LICENSE EXPIRATION; RENEWAL

(REPEALED)

SECTION HISTORY
1987, c. 395, §A212 (NEW). 1997, c. 209, §4 (RP).

§13229. GROUNDS FOR SUSPENSION OR REVOCATION OF LICENSE OR DENIAL OF RENEWAL

(REPEALED)

SECTION HISTORY
1987, c. 395, §A212 (NEW). 1997, c. 209, §4 (RP).

§13230. AUTOMATIC TERMINATION OF SALES AGENT REGISTRATION

(REPEALED)

SECTION HISTORY
1987, c. 395, §A212 (NEW). 1997, c. 209, §4 (RP).

§13231. ORDER, NOTICE OF SUSPENSION OR REVOCATION OF LICENSE

(REPEALED)

SECTION HISTORY
1987, c. 395, §A212 (NEW). 1997, c. 209, §4 (RP).

§13232. DURATION OF SUSPENSION; OBLIGATION DURING SUSPENSION PERIOD; REINSTATEMENT

(REPEALED)

SECTION HISTORY
1987, c. 395, §A212 (NEW). 1997, c. 209, §4 (RP).

§13233. FILING OF FORMS

(REPEALED)

SECTION HISTORY
1987, c. 395, §A212 (NEW). 1997, c. 209, §4 (RP).

§13234. FILING OF FEES

(REPEALED)

SECTION HISTORY
1987, c. 395, §A212 (NEW). 1997, c. 209, §4 (RP).

§13235. ANNUAL STATEMENT; EXAMINATION

(REPEALED)

SECTION HISTORY
1987, c. 395, §A212 (NEW). 1991, c. 627, §1 (AMD). 1997, c. 209, §4 (RP).

§13236. SERVICE OF PROCESS; APPOINTMENT OF DIRECTOR AS PROCESS AGENT

(REPEALED)

SECTION HISTORY
1987, c. 395, §A212 (NEW). 1997, c. 209, §4 (RP).

§13237. HOME SERVICE COMPANY SALES AGENT REGISTRATION REQUIRED

(REPEALED)

SECTION HISTORY
1987, c. 395, §A212 (NEW). 1997, c. 209, §4 (RP).

§13238. PENALTY FOR VIOLATION

(REPEALED)

SECTION HISTORY
1987, c. 395, §A212 (NEW). 1997, c. 209, §4 (RP).

§13239. TRANSITIONAL PROVISIONS

(REPEALED)

SECTION HISTORY
1987, c. 395, §A212 (NEW). 1989, c. 600, §§A15,16 (AMD). 1989, c. 600, §§A15,A16 (AMD). 1991, c. 53, §9 (RP).

Subchapter 6: OPINIONS OF VALUE HEADING: PL 1987, C. 770, §10 (NEW)

§13251. OPINIONS OF VALUE; MOBILE HOMES

(REPEALED)

SECTION HISTORY
1987, c. 770, §10 (NEW). 1999, c. 129, §16 (AFF). 1999, c. 129, §14 (RP).

§13251-A. CONFLICT OF INTEREST

A real estate broker or associate broker may not knowingly provide or offer an appraisal or opinion of market value, as set forth in section 14004, on real estate in a transaction where the broker or associate broker, or any other licensee licensed with the agency, is to receive a fee on that transaction. [1999, c. 185, §3 (AMD).]

SECTION HISTORY
1995, c. 240, §1 (NEW). 1999, c. 185, §3 (AMD).

Subchapter 7: REAL ESTATE BROKERAGE RELATIONSHIPS
HEADING: PL 1993, C. 679, §1 (NEW); 2005, C. 378, §12 (RPR)

§13271. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1993, c. 679, §1 (NEW).]

1. **Affiliated licensee.** "Affiliated licensee" means a licensee who is authorized to engage in brokerage activity by and on behalf of a real estate brokerage agency.

[2005, c. 378, §13 (AMD); 2005, c. 378, §29 (AFF) .]

2. **Appointed agent.** "Appointed agent" means that affiliated licensee who is appointed by the designated broker of the affiliated licensee's real estate brokerage agency to act solely for a client of that real estate brokerage agency to the exclusion of other affiliated licensees of that real estate brokerage agency.

[2005, c. 378, §13 (AMD); 2005, c. 378, §29 (AFF) .]

3. **Brokerage agreement.** "Brokerage agreement" means a contract that establishes the relationships between the parties and the brokerage services to be performed.

[2005, c. 378, §13 (AMD); 2005, c. 378, §29 (AFF) .]

4. **Buyer agent.** "Buyer agent" means a real estate brokerage agency that has entered into a written brokerage agreement with the buyer in a real estate transaction to represent the buyer as its client.

[2005, c. 378, §13 (AMD); 2005, c. 378, §29 (AFF) .]

5. **Client.** "Client" means a person who has entered into a written brokerage agreement with a real estate brokerage agency that has agreed to represent that person and be bound by the duties set forth in section 13272 on behalf of that person.

[2005, c. 378, §13 (AMD); 2005, c. 378, §29 (AFF) .]

6. **Designated broker.** "Designated broker" means a broker designated by a real estate brokerage agency to act for the real estate brokerage agency in the conduct of real estate brokerage.

[2005, c. 378, §13 (AMD); 2005, c. 378, §29 (AFF) .]

7. **Disclosed dual agent.** "Disclosed dual agent" means a real estate brokerage agency representing 2 or more clients whose interests are adverse in the same transaction with the knowledge and informed consent of the clients.

[2005, c. 378, §13 (AMD); 2005, c. 378, §29 (AFF) .]

8. **Material fact.** "Material fact" means a fact that relates to the transaction and is so substantial and important as to influence the client to whom it is imparted.

[2005, c. 378, §13 (AMD); 2005, c. 378, §29 (AFF) .]

9. **Ministerial acts.** "Ministerial acts" means those acts that a real estate brokerage agency performs for a person who is not a client and that are informative or clerical in nature and do not rise to the level of active representation on behalf of the person.

[2005, c. 378, §13 (AMD); 2005, c. 378, §29 (AFF) .]

10. **Real estate brokerage agency.** "Real estate brokerage agency" means a person or entity providing real estate brokerage services through that person's designated broker, affiliated licensees, associates or employees and licensed by the commission as a real estate brokerage agency.

[2005, c. 378, §13 (AMD); 2005, c. 378, §29 (AFF) .]

11. **Seller agent.** "Seller agent" means a real estate brokerage agency that has entered into a written brokerage agreement with the seller in a real estate transaction to represent the seller as the real estate brokerage agency's client.

[2005, c. 378, §13 (AMD); 2005, c. 378, §29 (AFF) .]

12. **Subagent.** "Subagent" means a real estate brokerage agency engaged by another real estate brokerage agency to perform brokerage tasks for a client.

[2005, c. 378, §13 (AMD); 2005, c. 378, §29 (AFF) .]

13. **Third party.**

[2005, c. 378, §29 (AFF); 2005, c. 378, §13 (RP) .]

13-A. **Transaction broker.** "Transaction broker" means a real estate brokerage agency that provides real estate brokerage services to one or more parties in a real estate transaction without a fiduciary relationship as a buyer agent, a seller agent, a subagent or a disclosed dual agent.

[2005, c. 378, §13 (NEW); 2005, c. 378, §29 (AFF) .]

14. **Undisclosed dual agent.** "Undisclosed dual agent" means a real estate brokerage agency representing 2 or more clients whose interests are adverse in the same transaction without the knowledge and informed consent of the clients.

[2005, c. 378, §13 (AMD); 2005, c. 378, §29 (AFF) .]

SECTION HISTORY
1993, c. 679, §1 (NEW). 1999, c. 129, §15 (AMD). 1999, c. 129, §16 (AFF). 2005, c. 378, §13 (AMD). 2005, c. 378, §29 (AFF).

§13272. SCOPE OF AGENCY

A real estate brokerage agency that provides services through a brokerage agreement for a client is bound by the duties of loyalty, obedience, disclosure, confidentiality, reasonable care, diligence and accounting as set forth in this chapter. Such a real estate brokerage agency may be a seller agent, a buyer agent, a subagent or a disclosed dual agent. [2005, c. 378, §14 (AMD); 2005, c. 378, §29 (AFF).]

SECTION HISTORY
1993, c. 679, §1 (NEW). 2005, c. 378, §14 (AMD). 2005, c. 378, §29 (AFF).

§13273. SELLER AGENT

1. **Duty to seller.** A seller agent:

A. Shall perform the terms of the brokerage agreement made with the seller; [1993, c. 679, §1 (NEW).]

B. Shall promote the interests of the seller by exercising agency duties as set forth in section 13272 including:

(1) Seeking a sale at the price and terms stated in the brokerage agreement or at a price and terms acceptable to the seller except that the seller agent is not obligated to seek additional offers to purchase the property while the property is subject to a contract of sale unless the brokerage agreement so provides;

(2) Presenting in a timely manner all offers to and from the seller, even when the property is subject to a contract of sale;

(3) Disclosing to the seller material facts of which the seller agent has actual knowledge or if acting in a reasonable manner should have known concerning the transaction, except as directed in section 13280;

(4) Advising the seller to obtain expert advice on material matters that are beyond the expertise of the seller agent; and

(5) Accounting in a timely manner for all money and property received in which the seller has or may have an interest; [2005, c. 378, §14 (AMD); 2005, c. 378, §29 (AFF).]

C. Shall exercise reasonable skill and care; [1993, c. 679, §1 (NEW).]

D. Shall comply with all requirements of the laws governing real estate commission brokerage licenses and any rules adopted by the commission; [1993, c. 679, §1 (NEW).]

E. Shall comply with any applicable federal, state or local laws, rules, regulations or ordinances related to real estate brokerage including fair housing and civil rights laws or regulations; [1993, c. 679, §1 (NEW).]

F. Has an obligation to preserve confidential information provided by the seller during the course of the relationship that might have a negative impact on the seller's real estate activity unless:

(1) The seller to whom the information pertains grants consent to disclose the information;

(2) Disclosure of the information is required by law;

(3) The information is made public or becomes public by the words or conduct of the seller to whom the information pertains or from a source other than the seller agent; or

(4) Disclosure is necessary to defend the seller agent against an accusation of wrongful conduct in a judicial proceeding before the commission or before a professional committee; and [2005, c. 378, §14 (AMD); 2005, c. 378, §29 (AFF).]

G. Must be able to promote alternative properties not owned by the seller to prospective buyers as well as list competing properties for sale without breaching any duty to the client. [1993, c. 679, §1 (NEW).]

[2005, c. 378, §14 (AMD); 2005, c. 378, §29 (AFF) .]

2. **Duty to buyer.** The duty of a seller agent to a buyer is governed by the following.

A. A seller agent shall treat all prospective buyers honestly and may not knowingly give false information and shall disclose in a timely manner to a prospective buyer all material defects pertaining to the physical condition of the property of which the seller agent knew or, acting in a reasonable manner, should have known. A seller agent is not liable to a buyer for providing false information to the buyer if the false information was provided to the seller agent by the seller agent's client and the seller agent did not know or, acting in a reasonable manner, should not have known that the information was false. A seller agent is not obligated to discover latent defects in the property. [2005, c. 378, §14 (AMD); 2005, c. 378, §29 (AFF).]

B. Nothing in this subchapter precludes the obligation of a buyer to inspect the physical condition of the property. A cause of action may not arise on behalf of any person against a seller agent for revealing information in compliance with this subchapter. [2005, c. 378, §14 (AMD); 2005, c. 378, §29 (AFF).]

C. A seller agent may provide assistance to the buyer by performing ministerial acts such as preparing offers and conveying those offers to the seller and providing information and assistance concerning professional services not related to real estate brokerage services. Performing ministerial acts for the buyer may not be construed as violating the seller agent's agreement with the seller or forming a brokerage agreement with the buyer. Performing ministerial acts for the buyer does not make the seller agent a transaction broker for the buyer. [2005, c. 378, §14 (AMD); 2005, c. 378, §29 (AFF).]

[2005, c. 378, §14 (AMD); 2005, c. 378, §29 (AFF) .]

SECTION HISTORY
1993, c. 679, §1 (NEW). 2005, c. 378, §14 (AMD). 2005, c. 378, §29 (AFF).

§13274. BUYER AGENT

1. **Duty to buyer.** A buyer agent:

A. Shall perform the terms of the brokerage agreement made with the buyer; [1993, c. 679, §1 (NEW).]

B. Shall promote the interests of the buyer by exercising agency duties as set forth in section 13272 including:

(1) Seeking a property at a price and terms specified by the buyer except that the buyer agent is not obligated to seek other properties for the buyer while the buyer is a party to a contract to purchase that property unless it is provided by the brokerage agreement;

(2) Presenting in a timely manner all offers to and from the buyer;

(3) Disclosing to the buyer material facts of which the buyer agent has actual knowledge or, if acting in a reasonable manner, should have known concerning the transaction, except as directed in section 13280. Nothing in this subchapter limits any obligation of a buyer to inspect the physical condition of the property;

(4) Advising the buyer to obtain expert advice on material matters that are beyond the expertise of the buyer agent; and

(5) Accounting in a timely manner for all money and property received in which the buyer has or may have an interest; [2005, c. 378, §14 (AMD); 2005, c. 378, §29 (AFF).]

C. Shall exercise reasonable skill and care, except that a buyer agent is not obligated to discover latent defects in the property; [2005, c. 378, §14 (AMD); 2005, c. 378, §29 (AFF).]

D. Shall comply with all requirements of the laws governing real estate commission brokerage licenses and any rules adopted by the commission; [1993, c. 679, §1 (NEW).]

E. Shall comply with any applicable federal, state or local laws, rules, regulations or ordinances related to real estate brokerage including fair housing and civil rights laws or regulations; [1993, c. 679, §1 (NEW).]

F. Has an obligation to preserve confidential information provided by the buyer during the course of the relationship that might have a negative impact on the buyer's real estate activity unless:

(1) The buyer to whom the information pertains grants consent to disclose the information;

(2) Disclosure of the information is required by law;

(3) The information is made public or becomes public by the words or conduct of the buyer to whom the information pertains or from a source other than the buyer agent; or

(4) Disclosure is necessary to defend the buyer agent against an action of wrongful conduct in a judicial proceeding before the commission or before a professional committee; and [2005, c. 378, §14 (AMD); 2005, c. 378, §29 (AFF).]

G. Must be able to promote other properties in which the buyer is interested to other buyers who might also be clients of the buyer agent without breaching any duty or obligation. [2005, c. 378, §14 (AMD); 2005, c. 378, §29 (AFF).]

[2005, c. 378, §14 (AMD); 2005, c. 378, §29 (AFF) .]

2. **Duty to seller.** The duty of a buyer agent to a seller is governed by the following.

A. A buyer agent shall treat all prospective sellers honestly and may not knowingly give them false information including material facts about the buyer's financial ability to perform the terms of the transaction. [2005, c. 378, §14 (AMD); 2005, c. 378, §29 (AFF).]

B. A buyer agent is not liable to a seller for providing false information to the seller if the false information was provided to the buyer agent by the buyer agent's client and the buyer agent did not know or, acting in a reasonable manner, should not have known that the information was false. A cause of action may not arise on behalf of any person against a buyer agent for revealing information in compliance with this subchapter. [2005, c. 378, §14 (AMD); 2005, c. 378, §29 (AFF).]

C. A buyer agent may provide assistance to the seller by performing ministerial acts such as preparing and conveying offers to the buyer and providing information and assistance concerning professional services not related to real estate brokerage services. Performing ministerial acts for the seller may not be construed as violating the buyer agent's agreement with the buyer or forming a brokerage agreement with the seller. Performing ministerial acts for the seller does not make the buyer agent a transaction broker for the seller. [2005, c. 378, §14 (AMD); 2005, c. 378, §29 (AFF).]

[2005, c. 378, §14 (AMD); 2005, c. 378, §29 (AFF) .]

SECTION HISTORY
1993, c. 679, §1 (NEW). 2005, c. 378, §14 (AMD). 2005, c. 378, §29 (AFF).

§13275. DISCLOSED DUAL AGENT

1. **Consent agreement; disclosed dual agent.** A real estate brokerage agency may act as a disclosed dual agent only with the informed written consent of all parties. Consent is presumed to be informed if the party signs an agreement that contains the following:

A. A description of the transactions in which the real estate brokerage agency will serve as a disclosed dual agent; [1993, c. 679, §1 (NEW).]

B. A statement that, in serving as a disclosed dual agent, the real estate brokerage agency represents 2 clients whose interests are adverse and that the agency duties are limited; [1993, c. 679, §1 (NEW).]

C. A statement that the disclosed dual agent may disclose any information to one party that the disclosed dual agent gains from the other party if that information is relevant to the transaction, except:

(1) The willingness or ability of the seller to accept less than the asking price;

(2) The willingness or ability of the buyer to pay more than has been offered;

(3) Confidential negotiating strategy not disclosed in the sales offer as terms of the sale; and

(4) The motivation of the seller for selling and the motivation of the buyer for buying; [2005, c. 378, §15 (AMD); 2005, c. 378, §29 (AFF).]

D. A statement that the client may choose to consent or not consent to the disclosed dual agency; and [1993, c. 679, §1 (NEW).]

E. A statement that the consent of the client has been given voluntarily and that the agreement has been read and understood. [1993, c. 679, §1 (NEW).]

[2005, c. 378, §15 (AMD); 2005, c. 378, §29 (AFF) .]

2. **Cause of action.** A cause of action may not be brought on behalf of any person against a disclosed dual agent for making disclosures permitted or required by this subchapter and the disclosed dual agent does not terminate any client relationship by making disclosures permitted or required by this subchapter.

[2005, c. 378, §16 (AMD); 2005, c. 378, §29 (AFF) .]

3. **Actual knowledge; information.** In a disclosed dual agent situation each client and the real estate brokerage agency and its affiliated licensees are considered to possess only actual knowledge and information. There is no imputation of knowledge or information by operation of law among or between the clients, the real estate brokerage agency or its affiliated licensees.

[1993, c. 679, §1 (NEW) .]

4. **Duty to parties.** The duty of a disclosed dual agent to the client who is selling is the same as set forth in section 13273, and the duty to the client who is buying is the same as set forth in section 13274, except that:

A. A disclosed dual agent may not promote the interests of one party to the detriment of the other party except as required to comply with this section; and [2005, c. 378, §17 (NEW); 2005, c. 378, §29 (AFF).]

B. A disclosed dual agent may disclose any information to one party that the disclosed dual agent gains from the other party if that information is relevant to the transaction, except:

(1) The willingness or ability of the seller to accept less than the asking price;

(2) The willingness or ability of the buyer to pay more than has been offered;

(3) Confidential negotiating strategy not disclosed in the sales offer as terms of the sale; and

(4) The motivation of the seller for selling and the motivation of the buyer for buying. [2005, c. 378, §17 (NEW); 2005, c. 378, §29 (AFF).]

[2005, c. 378, §17 (NEW); 2005, c. 378, §29 (AFF) .]

SECTION HISTORY
1993, c. 679, §1 (NEW). 2005, c. 378, §§15-17 (AMD). 2005, c. 378, §29 (AFF).

§13276. INTERPRETATION

The provisions of this subchapter supersede the duties and responsibilities of the parties under the common law, including fiduciary responsibilities of an agent to a client or principal, except with regard to vicarious liability and except as set forth in this subchapter. This section does not preclude the use of common law, when it is not inconsistent with this subchapter, in defining and interpreting the duties listed in section 13272. This section does not abrogate an injured party's cause of action pursuant to this chapter. [1993, c. 679, §1 (NEW).]

SECTION HISTORY
1993, c. 679, §1 (NEW).

§13277. WRITTEN POLICY

Every real estate brokerage agency shall adopt a written company policy that identifies and describes the types of real estate brokerage relationships in which the designated broker and affiliated licensees may engage. [2005, c. 378, §18 (AMD); 2005, c. 378, §29 (AFF).]

SECTION HISTORY
1993, c. 679, §1 (NEW). 2005, c. 378, §18 (AMD). 2005, c. 378, §29 (AFF).

§13278. APPOINTED AGENTS WITHIN A FIRM

1. **Appointed agents.** A real estate brokerage agency entering into a brokerage agreement may, through the designated broker, appoint in writing to the client those affiliated licensees within the real estate brokerage agency who will be acting as appointed agents of that client to the exclusion of all other affiliated licensees within the real estate brokerage agency.

[1993, c. 679, §1 (NEW) .]

2. **Not a dual agent.** A real estate brokerage agency and the designated broker are not considered to be dual agents solely because of an appointment under the provisions of this section, except that any affiliated licensee who personally represents both the seller and the buyer, as clients, in a particular transaction is considered to be a dual agent and is required to comply with the provisions of this subchapter governing disclosed dual agents.

[2005, c. 378, §19 (AMD); 2005, c. 378, §29 (AFF) .]

3. **Actual knowledge; information.** When agents are appointed, each client, the real estate brokerage agency and its appointed licensees are considered to possess only actual knowledge and information. There is no imputation of knowledge or information by operation of law among or between the clients, the real estate brokerage agency and appointed agents.

[1993, c. 679, §1 (NEW) .]

4. **Appointments; roles.** Methods of appointment and the role of the real estate brokerage agency and the designated broker must be defined by rules adopted by the commission. The rules must include a requirement that clients be informed as to the real estate brokerage agency's appointed agent policy and give written consent to that policy in advance of entering into a brokerage agreement.

[2005, c. 378, §19 (AMD); 2005, c. 378, §29 (AFF) .]

SECTION HISTORY
1993, c. 679, §1 (NEW). 2005, c. 378, §19 (AMD). 2005, c. 378, §29 (AFF).

§13279. REAL ESTATE BROKERAGE RELATIONSHIP DISCLOSURE REQUIRED

A real estate brokerage agency shall provide in a timely manner to buyers and sellers of residential real property a meaningful, written real estate brokerage relationship disclosure form as defined and mandated by rules adopted by the commission. For purposes of this section, "residential real property" means real estate consisting of not less than one nor more than 4 residential dwelling units. [2005, c. 378, §20 (AMD); 2005, c. 378, §29 (AFF).]

SECTION HISTORY
1993, c. 679, §1 (NEW). 1999, c. 100, §1 (AMD). 2005, c. 378, §20 (AMD). 2005, c. 378, §29 (AFF).

§13280. REAL ESTATE COMMISSION RULES

The commission shall adopt rules setting forth criteria necessary to the implementation of this subchapter. The rules must include, but are not limited to, the following: [1993, c. 679, §1 (NEW).]

1. **Disclosure.** Those aspects of the services of a real estate brokerage agency and its affiliated licensees that must be disclosed to a client; and

[1993, c. 679, §1 (NEW) .]

2. **Handling of information.** Procedures to be followed by a real estate brokerage agency and its affiliated licensees to prevent the mishandling of information and undisclosed dual agency in the representation of clients. In adopting these rules, the commission shall consider the formal and informal sharing of information within a real estate brokerage agency, the arrangement of real estate brokerage agency office space, the relationships of affiliated licensees within a real estate brokerage agency who are representing clients with adverse interests and means of avoiding client representation by an undisclosed dual agent. The commission shall review the professional responsibility rules and practices of the legal profession with regard to conflict of interest in considering the adoption of rules under this subsection.

[1993, c. 679, §1 (NEW) .]

SECTION HISTORY
1993, c. 679, §1 (NEW).

§13281. DURATION OF THE RELATIONSHIP

1. **Effective date.** The relationships set forth in this subchapter commence on the effective date of the real estate brokerage agency's brokerage agreement and continue until performance, completion, termination or expiration of that brokerage agreement.

[2005, c. 378, §21 (AMD); 2005, c. 378, §29 (AFF) .]

2. **Obligation; termination.** A real estate brokerage agency and an affiliated licensee owe no further duty or obligation after termination, expiration, completion or performance of the brokerage agreement, except the duties of:

A. Accounting in a timely manner for all money and property related to, and received during, the relationship; and [1993, c. 679, §1 (NEW).]

B. For seller agents, buyer agents, subagents and disclosed dual agents, treating as confidential information provided by the client during the course of the relationship that could have a negative impact on the client's real estate activity, unless:

(1) The client to whom the information pertains grants written consent;

(2) Disclosure of the information is required by law;

(3) The information is made public or becomes public by the words or conduct of the client to whom the information pertains or from a source other than the real estate brokerage agency or the affiliated licensee; or

(4) Disclosure is necessary to defend the real estate brokerage agency or an affiliated licensee against an action of wrongful conduct in a judicial proceeding before the commission or before a professional committee. [2005, c. 378, §22 (AMD); 2005, c. 378, §29 (AFF).]

[2005, c. 378, §22 (AMD); 2005, c. 378, §29 (AFF) .]

SECTION HISTORY
1993, c. 679, §1 (NEW). 2005, c. 378, §§21,22 (AMD). 2005, c. 378, §29 (AFF).

§13282. PRESUMPTION

Except as otherwise provided in this subchapter, a real estate brokerage agency providing real estate brokerage services is presumed to be acting as a transaction broker unless the real estate brokerage agency has agreed, in a written brokerage agreement, to represent one or more parties to the real estate transaction as the real estate brokerage agency's clients. Client representation may not be created orally or by implication or be assumed by a real estate brokerage agency or any party to a real estate transaction. [2005, c. 378, §23 (NEW); 2005, c. 378, §29 (AFF).]

SECTION HISTORY
2005, c. 378, §23 (NEW). 2005, c. 378, §29 (AFF).

§13283. TRANSACTION BROKER

1. **Not an agent.** A transaction broker does not represent any party as a client to a real estate transaction and is not bound by the duties set forth in section 13272.

[2005, c. 378, §23 (NEW); 2005, c. 378, §29 (AFF) .]

2. **Responsibilities.** A transaction broker shall:

A. Account in a timely manner for all money and property received; [2005, c. 378, §23 (NEW); 2005, c. 378, §29 (AFF).]

B. Disclose in a timely manner to a buyer to a transaction all material defects pertaining to the physical condition of the property of which the transaction broker has actual notice or knowledge; [2005, c. 378, §23 (NEW); 2005, c. 378, §29 (AFF).]

C. Comply with all requirements of the laws governing real estate commission brokerage licenses and any rules adopted by the commission; [2005, c. 378, §23 (NEW); 2005, c. 378, §29 (AFF).]

D. Comply with any applicable federal, state or local laws, rules, regulations or ordinances related to real estate brokerage, including fair housing and civil rights laws or regulations; [2005, c. 378, §23 (NEW); 2005, c. 378, §29 (AFF).]

E. Treat all parties honestly and may not knowingly give false information; and [2005, c. 378, §23 (NEW); 2005, c. 378, §29 (AFF).]

F. Perform such ministerial acts as may be agreed upon between the transaction broker and one or more parties to a real estate transaction. [2005, c. 378, §23 (NEW); 2005, c. 378, §29 (AFF).]

A transaction broker is not liable for providing false information if the false information was provided to the transaction broker and the transaction broker did not know that the information was false. A transaction broker is not obligated to discover latent defects in the property. A cause of action does not arise on behalf of any person against a transaction broker who reveals information or makes disclosures permitted or required by this subchapter.

[2005, c. 378, §23 (NEW); 2005, c. 378, §29 (AFF) .]

3. **Prohibited acts.** A transaction broker may not:

A. Conduct an inspection, investigation or analysis of a property for the benefit of any party; [2005, c. 378, §23 (NEW); 2005, c. 378, §29 (AFF).]

B. Verify the accuracy or completeness of oral or written statements made by the seller or buyer or any 3rd party; or [2005, c. 378, §23 (NEW); 2005, c. 378, §29 (AFF).]

C. Promote the interests of either party to a transaction except as required to comply with this section. [2005, c. 378, §23 (NEW); 2005, c. 378, §29 (AFF).]

[2005, c. 378, §23 (NEW); 2005, c. 378, §29 (AFF) .]

4. **No vicarious liability.** A party to a real estate transaction is not vicariously liable for the acts or omissions of a transaction broker.

[2005, c. 378, §23 (NEW); 2005, c. 378, §29 (AFF) .]

5. **Actual knowledge; information.** In a situation in which one affiliated licensee acting as an appointed agent of a real estate brokerage agency represents a party to a real estate transaction as the real estate brokerage agency's client and another affiliated licensee of the same real estate brokerage agency is acting as a transaction broker for another party to the transaction, the real estate brokerage agency and its affiliated licensees are considered to possess only actual knowledge and information. There is no imputation of knowledge or information by operation of law among or between the parties, the real estate brokerage agency or its affiliated licensees.

[2005, c. 378, §23 (NEW); 2005, c. 378, §29 (AFF) .]

SECTION HISTORY
2005, c. 378, §23 (NEW). 2005, c. 378, §29 (AFF).

Chapter 115: THE MAINE ATHLETIC COMMISSION

§13501. COMMISSION

(REPEALED)

SECTION HISTORY
1987, c. 395, §A212 (NEW). 1989, c. 503, §B157 (AMD). 1991, c. 338, §2 (AMD). 1993, c. 600, §A267 (AMD). 2001, c. 166, §2 (AMD). 2007, c. 402, Pt. CC, §1 (AMD). 2007, c. 621, §13 (RP).

§13502. DECLARATION OF POLICY

(REPEALED)

SECTION HISTORY
1987, c. 395, §A212 (NEW). 2001, c. 166, §3 (AMD). 2007, c. 621, §13 (RP).

§13503. MEETINGS; CHAIR; QUORUM

(REPEALED)

SECTION HISTORY
1987, c. 395, §A212 (NEW). 2001, c. 166, §4 (AMD). 2007, c. 402, Pt. CC, §2 (AMD). 2007, c. 621, §13 (RP).

§13505. ANNUAL REPORTS

(REPEALED)

SECTION HISTORY
1987, c. 395, §A212 (NEW). 2007, c. 402, Pt. CC, §3 (RP).

§13506. JURISDICTION

(REPEALED)

SECTION HISTORY
1987, c. 395, §A212 (NEW). 1989, c. 700, §A159 (AMD). 2007, c. 621, §13 (RP).

§13506-A. PROHIBITED COMPETITIONS, EXHIBITIONS AND EVENTS

(REPEALED)

SECTION HISTORY
2001, c. 166, §5 (NEW). 2007, c. 621, §13 (RP).

§13507. POWERS AND DUTIES

(REPEALED)

SECTION HISTORY

1987, c. 395, §A212 (NEW). 1991, c. 338, §3 (AMD). 1995, c. 397, §107 (AMD). 2001, c. 166, §§6-9 (AMD). 2007, c. 402, Pt. CC, §§4, 5 (AMD). 2007, c. 621, §13 (RP).

§13508. HEADGEAR REQUIRED; SAFETY EQUIPMENT

(REPEALED)

SECTION HISTORY
1987, c. 395, §A212 (NEW). 2007, c. 621, §13 (RP).

§13509. HEAD INJURIES

(REPEALED)

SECTION HISTORY
1987, c. 395, §A212 (NEW). 2007, c. 621, §13 (RP).

§13510. BOXING, WRESTLING AND KICK-BOXING LICENSES

(REPEALED)

SECTION HISTORY
1987, c. 395, §A212 (NEW). 1991, c. 338, §4 (AMD). 1999, c. 685, §20 (AMD). 2001, c. 166, §10 (AMD). 2007, c. 621, §13 (RP).

§13511. WRESTLING LICENSES

(REPEALED)

SECTION HISTORY
1987, c. 395, §A212 (NEW). 1991, c. 338, §5 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 1999, c. 685, §21 (AMD). 2001, c. 166, §11 (AMD). 2007, c. 621, §13 (RP).

§13512. PERMITS FOR FOREIGN COPROMOTERS

(REPEALED)

SECTION HISTORY
1987, c. 395, §A212 (NEW). 2001, c. 166, §12 (AMD). 2007, c. 621, §13 (RP).

§13513. PROMOTER'S REPORTS

(REPEALED)

SECTION HISTORY
1987, c. 395, §A212 (NEW). 2007, c. 621, §13 (RP).

§13514. TAXES

(REPEALED)

SECTION HISTORY
1987, c. 395, §A212 (NEW). 1987, c. 816, §KK23 (AMD). 1991, c. 338, §6 (AMD). 1999, c. 685, §22 (AMD). 2001, c. 166, §13 (AMD). 2007, c. 402, Pt. CC, §6 (AMD). 2007, c. 621, §13 (RP).

§13515. DECISIONS

(REPEALED)

SECTION HISTORY
1987, c. 395, §A212 (NEW). 2007, c. 621, §13 (RP).

§13516. DENIAL OR REFUSAL TO REISSUE LICENSE; DISCIPLINARY ACTION

(REPEALED)

SECTION HISTORY
1987, c. 395, §A212 (NEW). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 402, Pt. CC, §7 (RPR). 2007, c. 621, §13 (RP).

§13517. PENALTIES; INJUNCTION

(REPEALED)

SECTION HISTORY
1987, c. 395, §A212 (NEW). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 402, Pt. CC, §8 (AMD). 2007, c. 621, §13 (RP).

Chapter 117: MAINE PHARMACY ACT

Subchapter 1: TITLE AND DEFINITIONS HEADING: PL 1987, C. 710, §5 (NEW)

§13701. SHORT TITLE

This chapter shall be known and may be cited as the "Maine Pharmacy Act." [1987, c. 710, §5 (NEW).]

SECTION HISTORY
1987, c. 710, §5 (NEW).

§13702. DEFINITIONS

(REPEALED)

SECTION HISTORY
1987, c. 710, §5 (NEW). 1993, c. 716, §1 (AMD). 1997, c. 117, §9 (AMD). 1997, c. 245, §§3,4 (AMD). RR 1999, c. 1, §46 (COR). 1999, c. 42, §§1,2 (AMD). 1999, c. 130, §§1-5 (AMD). 2005, c. 430, §6 (AMD). 2005, c. 430, §10 (AFF). 2007, c. 402, Pt. DD, §1 (RP).

§13702-A. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2007, c. 402, Pt. DD, §2 (NEW).]

1. **Automated pharmacy systems.** "Automated pharmacy systems" means mechanical systems that perform operations or activities, other than compounding, relative to the storage, packaging, labeling, dispensing or distribution of medications, and systems that collect, control and maintain all transactional information.

[2007, c. 402, Pt. DD, §2 (NEW) .]

2. **Board.** "Board" means the Maine Board of Pharmacy.

[2007, c. 402, Pt. DD, §2 (NEW) .]

2-A. **Collaborative drug therapy management.** "Collaborative drug therapy management" means the initiating, monitoring, modifying and discontinuing of a patient's drug therapy by a pharmacist as authorized by a practitioner in accordance with a collaborative practice agreement. "Collaborative drug therapy management" includes collecting and reviewing patient histories; obtaining and checking vital signs, including pulse, temperature, blood pressure and respiration; and, under the supervision of, or in direct consultation with, a practitioner, ordering and evaluating the results of laboratory tests directly related to drug therapy when performed in accordance with approved protocols applicable to the practice setting and when the evaluation does not include a diagnostic component.

[2013, c. 308, §1 (NEW) .]

2-B. **Collaborative practice agreement.** "Collaborative practice agreement" means a written and signed agreement between one or more pharmacists with training and experience relevant to the scope of the collaborative practice and a practitioner that supervises or provides direct consultation to the pharmacist or pharmacists engaging in collaborative drug therapy management that:

A. Defines the collaborative practice, which must be within the scope of the supervising practitioner's practice, in which the pharmacist or pharmacists may engage; [2013, c. 308, §1 (NEW).]

B. States the beginning and ending dates of the period of time during which the agreement is in effect; and [2013, c. 308, §1 (NEW).]

C. Includes individually developed guidelines for the prescriptive practice of the participating pharmacist or pharmacists. [2013, c. 308, §1 (NEW).]

[2013, c. 308, §1 (NEW) .]

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

[2007, c. 402, Pt. DD, §2 (NEW) .]

4. **Compounding.** "Compounding" means the preparation, mixing, assembling, packaging or labeling of a drug or device by a pharmacist for the pharmacist's patient either for dispensing as the result of a practitioner's prescription drug order, or for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale or dispensing. "Compounding" includes the preparation of drugs or devices in anticipation of prescription drug orders to be received by the pharmacist based on routine, regularly observed prescribing patterns.

[2007, c. 402, Pt. DD, §2 (NEW) .]

5. **Dangerous substance.** "Dangerous substance" means a substance described in section 13731, subsection 2.

[2007, c. 402, Pt. DD, §2 (NEW) .]

6. **Deliver or delivery.** "Deliver" or "delivery" means the actual, constructive or attempted transfer of a drug or device from one person to another, whether or not for a consideration.

[2007, c. 402, Pt. DD, §2 (NEW) .]

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

[2007, c. 402, Pt. DD, §2 (NEW) .]

8. **Device.** "Device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component part or accessory, that is required under federal or state law to be prescribed by a practitioner and dispensed by a pharmacist.

[2007, c. 402, Pt. DD, §2 (NEW) .]

9. **Dispense or dispensing.** "Dispense" or "dispensing" means the preparation and delivery of a prescription drug in a suitable container appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the prescription drug pursuant to a lawful order of a practitioner.

[2007, c. 402, Pt. DD, §2 (NEW) .]

10. **Distribute.** "Distribute" means the delivery of a drug other than by administering or dispensing.

[2007, c. 402, Pt. DD, §2 (NEW) .]

11. **Drug.** "Drug" means:

A. Articles recognized as drugs in the official United States Pharmacopeia and National Formulary, other drug compendiums or any supplement to any of them; [2007, c. 402, Pt. DD, §2 (NEW).]

B. Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or other animals; [2007, c. 402, Pt. DD, §2 (NEW).]

C. Articles, other than food, intended to affect the structure or any function of the body of humans or other animals; and [2007, c. 402, Pt. DD, §2 (NEW).]

D. Articles intended for use as a component of any articles specified in paragraphs A to C. [2007, c. 402, Pt. DD, §2 (NEW).]

[2007, c. 402, Pt. DD, §2 (NEW) .]

12. **Electronic transmission.** "Electronic transmission" means transmission of information in electronic form or the transmission of the exact visual image of a document by way of electronic equipment.

[2007, c. 402, Pt. DD, §2 (NEW) .]

13. **Free clinic.** "Free clinic" means an incorporated nonprofit health facility that provides health care to people at no charge.

[2007, c. 402, Pt. DD, §2 (NEW) .]

14. **Generic and therapeutically equivalent drug.** "Generic" and "therapeutically equivalent drug" means any drug that has identical amounts of the same active ingredients in the same dosage form and in the same concentration that, when administered in the same amounts, will produce or can be expected to have the same therapeutic effect as the drug prescribed.

[2007, c. 402, Pt. DD, §2 (NEW) .]

15. **Labeling.** "Labeling" means the process of preparing and affixing a label to the outside of any drug container, exclusive of the labeling by a manufacturer, packer or distributor of a nonprescription drug or commercially packaged legend drug or device. Any such label must include all information required by federal law or regulation and state law or rule.

[2007, c. 402, Pt. DD, §2 (NEW) .]

16. **Mail order contact lens supplier.** "Mail order contact lens supplier" means a person or entity, other than an optometrist or physician licensed in this State, that fills contact lens prescriptions by mail or carrier for a patient who resides in this State.

[2007, c. 402, Pt. DD, §2 (NEW) .]

17. **Mail order prescription pharmacy.** "Mail order prescription pharmacy" means an entity that dispenses prescription medications by mail or carrier from a facility not located in this State to a patient who resides in this State.

[2007, c. 402, Pt. DD, §2 (NEW) .]

18. **Manufacture.** "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a device or drug, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repacking of the substances or labeling or relabeling of its container, except that manufacture does not include the preparation or compounding of a drug by an individual for personal use or the preparation, compounding, packaging or labeling of a drug:

A. By a pharmacist or practitioner incidental to administering or dispensing a drug in the course of professional practice; or [2007, c. 402, Pt. DD, §2 (NEW).]

B. By a practitioner or by authorization under the practitioner's supervision for the purpose of or incidental to research, teaching or chemical analysis and not for sale. [2007, c. 402, Pt. DD, §2 (NEW).]

[2007, c. 402, Pt. DD, §2 (NEW) .]

19. **Manufacturer.** "Manufacturer" means a person engaged in the manufacture of prescription drugs.

[2007, c. 402, Pt. DD, §2 (NEW) .]

20. **Nonprescription drugs.** "Nonprescription drugs" means nonnarcotic drugs that may be sold without a prescription and that are prepackaged for use by the consumer and labeled in accordance with the requirements of the laws and rules of this State and the Federal Government.

[2007, c. 402, Pt. DD, §2 (NEW) .]

21. **Person.** "Person" means an individual, corporation, partnership, association or any other legal entity.

[2007, c. 402, Pt. DD, §2 (NEW) .]

22. **Pharmacist.** "Pharmacist" means an individual licensed by this State to engage in the practice of pharmacy.

A. "Chain pharmacist" means an individual who is engaged in the practice of pharmacy within a chain; that is, where there is a corporate grouping of 4 or more pharmacies. [2007, c. 402, Pt. DD, §2 (NEW).]

B. "Hospital pharmacist" means an individual who is engaged in the practice of pharmacy in a hospital setting. [2007, c. 402, Pt. DD, §2 (NEW).]

C. "Independent pharmacist" means an individual who is engaged in the practice of pharmacy in an independent pharmacy; that is, where there are fewer than 4 pharmacies under the same ownership. [2007, c. 402, Pt. DD, §2 (NEW).]

D. "Qualified assistant pharmacist" means an individual licensed by this State as a qualified assistant apothecary, qualified assistant or assistant pharmacist, provided that the license is in full force and effect, except for the right to serve as a pharmacist in charge. [2007, c. 402, Pt. DD, §2 (NEW).]

[2007, c. 402, Pt. DD, §2 (NEW) .]

23. **Pharmacist in charge.** "Pharmacist in charge" means the pharmacist who is responsible for the licensing of the pharmacy.

[2007, c. 402, Pt. DD, §2 (NEW) .]

24. **Pharmacy.** "Pharmacy" means:

A. Any pharmacy or drug outlet located in a retail store, mail order business, free clinic or rural health center with facilities located in this State that is engaged in dispensing, delivering or distributing prescription drugs; or [2007, c. 402, Pt. DD, §2 (NEW).]

B. Any mail order prescription company, or wholesaler, with facilities located in this State or doing business in this State that is engaged in dispensing, delivering or distributing prescription drugs. [2007, c. 402, Pt. DD, §2 (NEW).]

[2007, c. 402, Pt. DD, §2 (NEW) .]

24-A. **Pharmacy intern.** "Pharmacy intern" means a person who:

A. Is either enrolled in or a graduate of a school or college of pharmacy; and [2011, c. 496, §1 (NEW).]

B. Is licensed with the board and is authorized to engage in the practice of pharmacy while under the direct supervision of a licensed pharmacist. [2011, c. 496, §1 (NEW).]

[2011, c. 496, §1 (NEW) .]

25. **Pharmacy technician.** "Pharmacy technician" means a person employed by a pharmacy who works in a supportive role to, and under the direct supervision of, a licensed pharmacist.

[2007, c. 402, Pt. DD, §2 (NEW) .]

26. **Physician.** "Physician" means an allopathic physician or osteopathic physician.

[2007, c. 402, Pt. DD, §2 (NEW) .]

27. **Poison.** "Poison" means an agent that when ingested, inhaled or otherwise absorbed by a living organism is capable of producing a deleterious response seriously injuring function or producing death.

[2007, c. 402, Pt. DD, §2 (NEW) .]

28. **Practice of pharmacy.** "Practice of pharmacy" means the interpretation and evaluation of prescription drug orders; the compounding, dispensing and labeling of drugs and devices, except labeling by a manufacturer, packer or distributor of nonprescription drugs and commercially packaged legend drugs and devices; the participation in drug selection and drug utilization reviews; the proper and safe storage of drugs and devices and the maintenance of proper records for these drugs and devices; the administration of vaccines licensed by the United States Food and Drug Administration that are recommended by the United States Centers for Disease Control and Prevention Advisory Committee on Immunization Practices, or successor organization, for administration to adults; the performance of collaborative drug therapy management; the responsibility for advising, when necessary or regulated, of therapeutic values, content, hazards and use of drugs and devices; and the offering or performing of those acts, services, operations or transactions necessary in the conduct, operation, management and control of a pharmacy.

[2013, c. 308, §2 (AMD) .]

29. **Practitioner.** "Practitioner" means an individual who is licensed, registered or otherwise authorized in the appropriate jurisdiction to prescribe and administer drugs in the course of professional practice.

[2007, c. 402, Pt. DD, §2 (NEW) .]

30. **Prescription drug or legend drug.** "Prescription drug" or "legend drug" means a drug that:

A. Under federal law is required, prior to being dispensed or delivered, to be labeled with either of the following statements:

(1) "Caution: Federal law prohibits dispensing without prescription."; or

(2) "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian."; or [2007, c. 402, Pt. DD, §2 (NEW).]

B. Is required by an applicable federal or state law or rule to be dispensed on prescription only or is restricted to use by practitioners only. [2007, c. 402, Pt. DD, §2 (NEW).]

[2007, c. 402, Pt. DD, §2 (NEW) .]

31. **Prescription drug order.** "Prescription drug order" means a lawful written or oral order of a practitioner for a drug or device. Written orders may be issued on a prescription form or by electronic transmission.

[2007, c. 402, Pt. DD, §2 (NEW) .]

32. **Rural health center.** "Rural health center" means an incorporated nonprofit health facility that provides comprehensive primary health care to citizens in rural areas.

[2007, c. 402, Pt. DD, §2 (NEW) .]

33. **Targeted methamphetamine precursor.** "Targeted methamphetamine precursor" means any product containing any amount of ephedrine, pseudoephedrine or phenylpropanolamine or their salts, isomers or salts of isomers, either alone or in combination with other ingredients:

A. In dry or solid nonliquid form; or [2007, c. 402, Pt. DD, §2 (NEW).]

B. In liquid, liquid-filled capsule or glycerin matrix form if designation as a targeted methamphetamine precursor has been completed by rule adopted pursuant to section 13795, subsection 5, paragraph A. [2007, c. 402, Pt. DD, §2 (NEW).]

[2007, c. 402, Pt. DD, §2 (NEW) .]

34. **Wholesaler.** "Wholesaler" means a person who buys prescription drugs for resale and distribution to persons other than consumers.

[2007, c. 402, Pt. DD, §2 (NEW) .]

SECTION HISTORY
2007, c. 402, Pt. DD, §2 (NEW). 2009, c. 308, §1 (AMD). 2011, c. 496, §1 (AMD). 2011, c. 577, §1 (AMD). 2013, c. 308, §§1, 2 (AMD).

Subchapter 2: MAINE BOARD OF PHARMACY HEADING: PL 1987, C. 710, §5 (NEW); 1997, C. 245, §5 (RPR)

§13711. ESTABLISHMENT

There is established, within the department, in accordance with Title 5, chapter 379, the Maine Board of Pharmacy. The board has all of the duties, powers and authority specifically granted by and necessary to the enforcement of this Act. [1997, c. 245, §6 (AMD).]

SECTION HISTORY
1987, c. 710, §5 (NEW). 1997, c. 245, §6 (AMD).

§13712. MEMBERSHIP

The board consists of 7 members, two of whom must be public members as defined in Title 5, section 12004-A and the remainder of whom must be licensed pharmacists who possess the qualifications specified in section 13713. At the time of the appointment, at least one of the licensed pharmacists must be a hospital pharmacist, at least one must be a chain pharmacist and at least one must be an independent pharmacist. [2007, c. 402, Pt. DD, §3 (AMD).]

SECTION HISTORY
1987, c. 710, §5 (NEW). 2007, c. 402, Pt. DD, §3 (AMD).

§13713. QUALIFICATIONS

1. **Public members.** The public members of the board must be residents of this State who are at least 21 years of age and shall not be, nor ever have been, members of the profession of pharmacy, the spouse of a member of the profession of pharmacy, a person who has ever had any material financial interest in providing pharmacy services or a person who has engaged in any activity directly related to the practice of pharmacy.

[1987, c. 710, §5 (NEW) .]

2. **Licensed pharmacists.** The licensed pharmacist members of the board shall, at the time of their appointment:

A. Be residents of this State; [1987, c. 710, §5 (NEW).]

B. Be licensed and in good standing to engage in the practice of pharmacy in this State; [1987, c. 710, §5 (NEW).]

C. Be engaged in the practice of pharmacy in this State; and [1987, c. 710, §5 (NEW).]

D. Have 5 years of experience in the practice of pharmacy in this State after licensure. [1987, c. 710, §5 (NEW).]

[1987, c. 710, §5 (NEW) .]

SECTION HISTORY
1987, c. 710, §5 (NEW).

§13714. APPOINTMENT

The Governor shall appoint the members of the board. Prior to appointing any pharmacist as a member of the board, the Governor may solicit recommendations of candidates from the Maine Pharmacy Association and other pharmaceutical organizations as appropriate. [1987, c. 710, §5 (NEW).]

SECTION HISTORY
1987, c. 710, §5 (NEW).

§13715. TERMS OF OFFICE

(REPEALED)

SECTION HISTORY
1987, c. 710, §5 (NEW). 1993, c. 600, §A268 (RP).

§13715-A. TERMS OF OFFICE

1. **Length.** Members of the board are appointed for terms of 3 years. Appointments of members must comply with Title 10, section 8009.

[2007, c. 402, Pt. DD, §4 (AMD) .]

2. **Grounds for removal.** The Governor may remove a member of the board for cause.

[1993, c. 600, Pt. A, §269 (NEW) .]

SECTION HISTORY
1993, c. 600, §A269 (NEW). 2007, c. 402, Pt. DD, §4 (AMD).

§13716. ORGANIZATION

1. **Officers.** The board shall elect from its members a president and other officers as it considers appropriate and necessary to conduct its business.

[2007, c. 402, Pt. DD, §5 (AMD) .]

2. **Terms of office.** Officers elected by the board serve terms of one year commencing with the day of their elections.

[2007, c. 402, Pt. DD, §5 (AMD) .]

3. **Executive director.**

[1995, c. 397, §108 (RP) .]

SECTION HISTORY
1987, c. 710, §5 (NEW). 1995, c. 397, §108 (AMD). 2007, c. 402, Pt. DD, §5 (AMD).

§13717. COMPENSATION

(REPEALED)

SECTION HISTORY
1987, c. 710, §5 (NEW). 1995, c. 397, §109 (RP).

§13718. MEETINGS

1. **Number.** The board shall meet at least once a year to transact its business, which includes the election of officers and the reorganization of the board. The board shall meet at additional times as it may determine. Additional meetings may be called by the president or by 2/3 of the members of the board.

[2007, c. 402, Pt. DD, §6 (AMD) .]

2. **Place.**

[2007, c. 402, Pt. DD, §6 (RP) .]

3. **Notice.**

[2007, c. 402, Pt. DD, §6 (RP) .]

4. **Quorum.**

[2013, c. 246, Pt. B, §24 (RP) .]

5. **Open meeting.**

[2007, c. 402, Pt. DD, §6 (RP) .]

SECTION HISTORY
1987, c. 710, §5 (NEW). 2007, c. 402, Pt. DD, §6 (AMD). 2013, c. 246, Pt. B, §24 (AMD).

§13719. EMPLOYEES

(REPEALED)

SECTION HISTORY
1987, c. 710, §5 (NEW). 1995, c. 397, §110 (RP).

§13720. RULES

The board shall make, adopt, amend and repeal such rules as may, from time to time, be determined necessary by the board for the proper administration and enforcement of this Act. These rules shall be promulgated in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375. [1987, c. 710, §5 (NEW).]

SECTION HISTORY
1987, c. 710, §5 (NEW).

§13721. LICENSURE AND DISCIPLINE

1. **Responsibility.** The board's responsibility for the control and regulation of the practice of pharmacy in this State includes, but is not limited to, the following actions:

A. The licensing by examination or by reciprocity of applicants who are qualified to engage in the practice of pharmacy under this Act; [1987, c. 710, §5 (NEW).]

B. The renewal of licenses to engage in the practice of pharmacy; [1987, c. 710, §5 (NEW).]

C. The determination and issuance of standards for recognition and approval of degree programs of schools and colleges of pharmacy whose graduates shall be eligible for licensure in this State and the specification and enforcement of requirements for practical training, including internship; [1987, c. 710, §5 (NEW).]

D. The inspection during business hours of all pharmacies, dispensaries, stores, hospital pharmacies, extended care facilities, boarding homes, nursing homes, drug abuse treatment centers, penal institutions, family planning centers or other drug outlets in which drugs or medicines are manufactured, stored, distributed, compounded, dispensed or retailed in this State; [1987, c. 710, §5 (NEW).]

E. The licensing of any pharmacy as set out in section 13751 and any manufacturer or wholesaler whose products are distributed in this State; [2007, c. 402, Pt. DD, §7 (AMD).]

F. The enforcement of those provisions of this Act relating to the conduct or competence of pharmacists practicing in this State and the processing of complaints which could lead to the suspension, revocation or restriction of licenses to engage in the practice of pharmacy; [1987, c. 710, §5 (NEW).]

G. The licensing of pharmacy interns and adoption of rules governing the training, qualification and employment of pharmacy interns and pharmacy students; and [2011, c. 496, §2 (AMD).]

H. The licensing of pharmacy technicians, including the fee as set under section 13724, and adoption of rules governing the training, qualification and employment of pharmacy technicians. [2007, c. 402, Pt. DD, §8 (AMD).]

[2011, c. 496, §2 (AMD) .]

2. **Reciprocal inspections.** The board may enter into reciprocal inspection agreements with any state in which a mail order prescription facility selling drugs to Maine citizens is located.

[1997, c. 245, §8 (AMD) .]

3. **Pharmacist health program.** The board may establish protocols for the operation of a professional review committee as defined in Title 24, section 2502, subsection 4-A. The protocols must include the committee's reporting information the board considers appropriate regarding reports received, contracts or investigations made and the disposition of each report, as long as the committee is not required to disclose any personally identifiable information. The protocols may not prohibit an impaired pharmacist or pharmacy technician from seeking alternative forms of treatment.

The board has the power to contract with other agencies, individuals, firms or associations for the conduct and operation of a pharmacist health program operated by a professional review committee as that term is defined in Title 24, section 2502, subsection 4-A.

[2007, c. 288, §2 (NEW) .]

SECTION HISTORY
1987, c. 710, §5 (NEW). 1997, c. 245, §§7,8 (AMD). 2005, c. 262, §B1 (AMD). 2007, c. 288, §2 (AMD). 2007, c. 402, Pt. DD, §§7, 8 (AMD). 2011, c. 496, §2 (AMD).

§13722. MEDICATIONS, DRUGS, DEVICES AND OTHER MATERIALS

1. **Responsibility.** The board has the following responsibilities in regard to medications, drugs, devices and other materials used in this State in the diagnosis, mitigation and treatment or prevention of injury, illness and disease. The board shall:

A. Promulgate rules concerning the sale and dispensing of medications, drugs, devices and other materials, including the right to seize any such drugs, devices and other materials found to be detrimental to the public health and welfare by the board after appropriate hearing as required under the Maine Administrative Procedure Act, Title 5, chapter 375; [1987, c. 710, §5 (NEW).]

B. Establish the specifications of minimum professional and technical equipment, environment, supplies and procedure for the compounding or dispensing of medications, drugs, devices and other materials within the practice of pharmacy; [1987, c. 710, §5 (NEW).]

B-1. Establish standards for the use, maintenance and supervision of automated pharmacy systems. [1999, c. 130, §6 (NEW).]

C. Assure that standards for purity and quality of medications, drugs, devices and other materials within the practice of pharmacy are met; [1987, c. 710, §5 (NEW).]

D. Issue and renew licenses for purposes of ascertaining those persons engaged in the manufacture and distribution of drugs; [2007, c. 402, Pt. DD, §9 (AMD).]

E. Promulgate rules concerning the sale and the dispensing of any exempt narcotic preparation. An "exempt narcotic preparation" means any medicinal preparation that contains in 30 milliliters or, if a solid or semisolid preparation, in 30 grams:

(1) Not more than 130 milligrams of opium;

(2) Not more than 15 milligrams of morphine or any of its salts;

(3) Not more than 65 milligrams of codeine or any of its salts;

(4) Not more than 30 milligrams of dihydrocodeine or any of its salts; or

(5) Not more than one of the drugs named in subparagraphs (1) to (4).

A record shall be kept of the sale of exempt narcotic preparations. The record must contain the date of sale, signature and address of the purchaser, name of the preparation, purpose for which purchased and signature of the person making the sale; and [1987, c. 710, §5 (NEW).]

F. After notice and hearing, designate as potent medicinal substances any compounds of barbituric acid, amphetamines or any other central nervous system stimulants or depressants, psychic energizers or any other drugs having a tendency to depress or stimulate which are likely to be injurious to health if improperly used. [1987, c. 710, §5 (NEW).]

[2007, c. 402, Pt. DD, §9 (AMD) .]

SECTION HISTORY
1987, c. 710, §5 (NEW). 1999, c. 130, §6 (AMD). 2007, c. 402, Pt. DD, §9 (AMD).

§13723. OTHER DUTIES, POWERS AND AUTHORITY

The board has such other duties, powers and authority as may be necessary to enforce this Act and the board may adopt rules pursuant to this Act, which include, but are not limited to, the following. [1987, c. 710, §5 (NEW).]

1. **Professional associations.** The board may join professional organizations and associations organized exclusively to promote the improvement of the standards of the practice of pharmacy for the protection of the health and welfare of the public and whose activities assist and facilitate the work of the board.

[1987, c. 710, §5 (NEW) .]

2. **Bond.** In addition to any statutory requirements, the board may require such surety bonds as it considers necessary to guarantee the performance and discharge of the duties of any officer or employee receiving and disbursing funds.

[2007, c. 402, Pt. DD, §10 (AMD) .]

3. **Seal.**

[2007, c. 402, Pt. DD, §10 (RP) .]

4. **Reports.**

[2007, c. 402, Pt. DD, §10 (RP) .]

5. **Fees.**

[2005, c. 262, Pt. B, §2 (RP) .]

6. **Grants.** The board may receive and expend funds, in addition to its annual allocation, from parties other than the State, as long as:

A. The funds are awarded for the pursuit of a specific objective that the board is authorized to accomplish by this Act or that the board is qualified to accomplish by reason of its jurisdiction or professional expertise; [2007, c. 402, Pt. DD, §10 (AMD).]

B. The funds are expended for the pursuit of the objective for which they are awarded; [1987, c. 710, §5 (NEW).]

C. Activities connected with or occasioned by the expenditures of the funds do not interfere with or impair the performance of the board's duties and responsibilities and do not conflict with the exercise of the board's powers as specified by this Act; [1987, c. 710, §5 (NEW).]

D. The funds are kept in a separate, special state account; and [1987, c. 710, §5 (NEW).]

E. Periodic reports are made to the commissioner concerning the board's receipt and expenditure of the funds. [1987, c. 710, §5 (NEW).]

[2007, c. 402, Pt. DD, §10 (AMD) .]

7. **Investigatory powers.** The board shall notify the Department of the Attorney General upon receipt of a complaint. Upon receipt of the notifications, the Attorney General shall notify the department within a timely period if the alleged violation requires criminal investigation. If a case does not require criminal investigation, the board or its authorized representatives may investigate and gather evidence concerning alleged violations of this Act or of the rules of the board. The board or an authorized representative pursuant to paragraph A may remove from any premises authorized for inspection pursuant to section 13721, subsection 1, paragraph D certain original records relating to scheduled drugs or controlled substances, including, but not limited to, prescription records, shipping and delivery records, patient profiles, inventories and other drug records for the purposes of analysis, duplication and furthering the investigation. A signed inventory receipt of any records being removed must be furnished to the premises by the board or an authorized representative. When a means of producing legible photocopies is readily available at the site of the records being removed, an authorized representative removing the records shall leave photocopies of the records as part of an inventory receipt in accordance with this subsection. Except when photocopies are left as part of an inventory receipt, the board or an authorized representative removing records from the premises shall, within 48 hours from the time of removal, provide to a representative of the premises photocopies of any removed records, together with a certificate identifying the agency in possession of the records, or return the original records. Inventory receipts and photocopies of any removed records provided by the board or an authorized representative are admissible as evidence if offered by any representative of the premises to prove compliance with any rule of the board or requirement of law.

A. Prescriptions, orders and records required by this chapter and stocks of prescription and legend drugs are open only to the board, the board's authorized representatives, federal and state law enforcement officers whose duty it is to enforce the laws of this State or of the United States relating to scheduled drugs or controlled substances or to enforce conditions of probation or other supervision imposed by a court relating to scheduled drugs or controlled substances and other law enforcement officers authorized by the board, the Attorney General or the district attorney for the purposes of inspecting, investigating and gathering evidence of violations of law or any rule of the board. A person having knowledge by virtue of the person's office of any such prescription, order or record may not divulge that knowledge, except before a licensing board or representative or in connection with a prosecution or proceeding in court. [2009, c. 415, Pt. A, §19 (RPR).]

B. The Bureau of Health, the board, their officers, agents, inspectors and representatives, all peace officers within the State and all prosecuting attorneys shall enforce all provisions of this chapter, except those specifically delegated, and shall cooperate with all agencies charged with the enforcement of the laws of the United States, of this State and of all other states relating to prescription or legend drugs or their equivalent. [1991, c. 274, §2 (AMD).]

C. [1995, c. 621, §4 (RP).]

[2009, c. 415, Pt. A, §19 (AMD) .]

8. **Embargo.** The board may embargo certain drugs or devices as follows.

A. Notwithstanding anything in this Act to the contrary, if a duly authorized representative of the board finds or has probable cause to believe that any drug or device is adulterated or misbranded within the meaning of the United States Food and Drug Act, the board representative shall affix to the drug or device a tag or other appropriate marking giving notice that the article is or is suspected of being adulterated or misbranded and has been detained or embargoed, and warning all persons not to remove or dispose of the article by sale or otherwise until provision for removal or disposal is given by the board, its representative or the court. No person may remove or dispose of the embargoed drug or

device by sale or otherwise without the permission of the board or its representative or, after summary proceedings have been instituted, without permission from the court. [2007, c. 402, Pt. DD, §10 (AMD).]

B. When a drug or device detained or embargoed under paragraph A has been declared by a representative of the board to be adulterated or misbranded, the board shall, as soon as practical, report the declaration to the Attorney General's office, along with sufficient information to permit the Attorney General to bring a petition for an injunction to the judge of the court in whose jurisdiction the article is detained or embargoed. If the judge determines that the drug or device so detained or embargoed is not adulterated or misbranded, the board shall direct the immediate removal of the tag or other marking. [1987, c. 710, §5 (NEW).]

C. If the court finds the detained or embargoed drug or device is adulterated or misbranded, that drug or device, after entry of the decree, shall be destroyed at the expense of the owner under the supervision of the board representative and all court costs and fees, storage and other proper expense shall be borne by the owner of the drug or device. When the adulteration or misbranding may be corrected by proper labeling or processing of the drug or device, the court, after entry of the decree and after the costs, fees and expenses have been paid and a good and sufficient bond has been posted, may direct that the drug or device be delivered to the owner for labeling or processing under the supervision of a board representative. The expense of the supervision shall be paid by the owner. The bond shall be returned to the owner of the drug or device on representation to the court by the board that the drug or device is no longer in violation of the embargo and the expense of supervision has been paid. [1987, c. 710, §5 (NEW).]

[2007, c. 402, Pt. DD, §10 (AMD) .]

9. **Budget.**

[1995, c. 397, §111 (RP) .]

10. **Procedure.** Except as otherwise provided, the board shall exercise all of its duties, powers and authority in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375.

[1987, c. 710, §5 (NEW) .]

11. **Exemption.** The board may exempt a free clinic from all fees, in whole or in part, set under this chapter.

[2007, c. 402, Pt. DD, §10 (AMD) .]

SECTION HISTORY
1987, c. 710, §5 (NEW). 1991, c. 274, §2 (AMD). 1995, c. 251, §1 (AMD). 1995, c. 397, §111 (AMD). 1995, c. 499, §4 (AMD). 1995, c. 499, §5 (AFF). 1995, c. 621, §4 (AMD). 1997, c. 245, §§9,10 (AMD). 1999, c. 42, §3 (AMD). 2005, c. 262, §B2 (AMD). 2007, c. 344, §10 (AMD). 2007, c. 402, Pt. DD, §10 (AMD). 2009, c. 415, Pt. A, §19 (AMD).

§13724. FEES

The Director of the Office of Professional and Occupational Regulation may establish by rule fees for purposes authorized under this chapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for any one purpose may not exceed $325. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2007, c. 402, Pt. DD, §11 (AMD); 2011, c. 286, Pt. B, §5 (REV).]

SECTION HISTORY

2005, c. 262, §B3 (NEW). 2007, c. 402, Pt. DD, §11 (AMD). 2011, c. 286, Pt. B, §5 (REV).

Subchapter 3: LICENSING HEADING: PL 1987, C. 710, §5 (NEW)

§13731. UNLAWFUL PRACTICE; PENALTIES; INJUNCTIONS

1. **Applicability.** It is unlawful for any person to engage in the practice of pharmacy unless licensed to practice under this Act, except that:

A. Physicians, dentists, veterinarians or other practitioners of the healing arts who are licensed under the laws of this State may dispense and administer prescription drugs to their patients in the practice of their respective professions where specifically authorized to do so by law; [2013, c. 373, §1 (NEW).]

B. A licensed retail pharmacy that is located in Canada, the United Kingdom of Great Britain and Northern Ireland, the Commonwealth of Australia or New Zealand that meets its country's statutory and regulatory requirements may export prescription drugs by mail or carrier to a resident of this State for that resident's personal use. A licensed retail pharmacy described in this paragraph is exempt from licensure under this Act; and [2013, c. 373, §1 (NEW).]

C. An entity that contracts to provide or facilitate the exportation of prescription drugs from a licensed retail pharmacy described in paragraph B may provide or facilitate the provision of prescription drugs from that pharmacy by mail or carrier to a resident of this State for that resident's personal use. An entity that provides or facilitates the provision of prescription drugs pursuant to this paragraph is exempt from licensure under this Act. [2013, c. 373, §1 (NEW).]

[2013, c. 373, §1 (AMD) .]

2. **Authorization to deal with dangerous substances.** Practitioners, drug jobbers, drug wholesalers, drug manufacturers, pharmacists and pharmacies licensed under this chapter and approved animal shelters as provided in Title 7, section 3913, are authorized to deal professionally with dangerous substances. A dangerous substance is:

A. Any substance listed under the Federal Uniform Controlled Substance Act, sections 1 through 5; or [1987, c. 710, §5 (NEW).]

B. Anything deemed to be dangerous by the Federal Drug Administration, other federal agency, or the Attorney General of the United States. [1987, c. 710, §5 (NEW).]

[2007, c. 402, Pt. DD, §12 (AMD) .]

3. **Violation.** Any person who violates this chapter commits a Class E crime and, notwithstanding Title 17-A, section 1301, may be punished by a fine of not more than $1,000. Each violation of each section of this chapter constitutes a separate offense.

[1987, c. 710, §5 (NEW) .]

4. **Violation; suspension; penalty.** For any violation of this chapter, in addition to other disciplinary action which may be taken by the board, the board may suspend the violator's license for up to 90 days or impose a civil penalty of up to $500, or both, for each violation of each section of this chapter. The jurisdiction to suspend a license for up to 90 days shall be concurrent with that of the District Court.

[1987, c. 710, §5 (NEW); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

5. **Action to enjoin.** The State may bring an action to enjoin any licensee or person from violating this chapter, regardless of whether proceedings have been or may be instituted in the District Court or whether criminal proceedings have been or may be instituted.

[1987, c. 710, §5 (NEW); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

6. **Fees; fines; forfeitures.**

[1995, c. 397, §112 (RP) .]

SECTION HISTORY
1987, c. 710, §5 (NEW). 1995, c. 397, §112 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 402, Pt. DD, §12 (AMD). 2013, c. 373, §1 (AMD).

§13732. QUALIFICATIONS FOR LICENSURE BY EXAMINATION

1. **Requirements.** To obtain a license to engage in the practice of pharmacy, an applicant for licensure by examination must:

A. Have submitted a written application in the form prescribed by the board together with the required examination and license fee as set under section 13724; [2005, c. 262, Pt. B, §4 (AMD).]

B. Have attained the age of 21 years; [1987, c. 710, §5 (NEW).]

C. Have demonstrated good moral character and temperate habits; [1987, c. 710, §5 (NEW).]

D. Have graduated and received the first professional undergraduate degree from a pharmacy degree program accredited by the American Council on Pharmaceutical Education or have received a degree from an equivalent program, which has been approved by the board, from a school outside the United States; [1987, c. 710, §5 (NEW).]

E. Have completed an internship or other program that has been approved by the board or demonstrated, to the board's satisfaction, experience in the practice of pharmacy that meets or exceeds the minimum internship requirement of the board; and [2005, c. 262, Pt. B, §4 (AMD).]

F. Have successfully passed an examination approved by the board. [2005, c. 262, Pt. B, §4 (AMD).]

G. [2005, c. 262, Pt. B, §5 (RP).]

[2005, c. 262, Pt. B, §§4, 5 (AMD) .]

2. **Examinations.** Examinations shall be prepared and administered according to this subsection.

A. The examination shall be prepared to measure the competence of the applicant to engage in the practice of pharmacy. The board may employ and cooperate with any organization or consultant in the preparation and grading of an appropriate examination, but shall retain the sole discretion and responsibility of determining which applicants have successfully passed the examination. [1987, c. 710, §5 (NEW).]

B. [2007, c. 402, Pt. DD, §13 (RP).]

[2007, c. 402, Pt. DD, §13 (AMD) .]

3. **Internship and other training programs.** Internship and practical experience requirements shall be determined as follows.

A. All applicants for licensure by examination must obtain practical experience in the practice of pharmacy concurrent with or after college attendance under such terms and conditions as the board may determine. [1987, c. 710, §5 (NEW).]

B. The board shall establish standards for internship or any other program necessary to qualify an applicant for the licensure examination and shall also determine the necessary qualifications of any preceptors used in any internship or other program. [1987, c. 710, §5 (NEW).]

[1987, c. 710, §5 (NEW) .]

SECTION HISTORY
1987, c. 710, §5 (NEW). 2005, c. 262, §§B4,5 (AMD). 2007, c. 402, Pt. DD, §13 (AMD).

§13733. QUALIFICATIONS FOR LICENSURE BY ENDORSEMENT

1. **Requirements.** To obtain a license as a pharmacist by reciprocity an applicant for licensure must:

A. Have submitted a written application together with the fee as set under section 13724; [2007, c. 402, Pt. DD, §14 (AMD).]

B. Have attained the age of 21 years; [1987, c. 710, §5 (NEW).]

C. Have demonstrated trustworthiness and competency; [2007, c. 402, Pt. DD, §14 (AMD).]

D. Have possessed at the time of initial licensure as a pharmacist such other qualifications necessary to have been eligible for licensure at that time in this State, except that if the state requirement of graduation from a pharmacy degree program accredited by the American Council on Pharmaceutical Education applies, this requirement may be waived for an applicant who, notwithstanding paragraph E, has graduated from a college of pharmacy in the United States prior to June 1, 1985, has engaged in the practice of pharmacy within the United States for a period of at least 5 years within the 10 years immediately preceding the application and who has passed the national pharmacy examination prepared by the National Association of Boards of Pharmacy; [1995, c. 257, §1 (AMD).]

E. Have engaged in the practice of pharmacy for a period of at least one year or have met the internship requirements of this State within the one-year period immediately previous to the date of the application; [1987, c. 710, §5 (NEW).]

F. Have passed the state pharmacy law exam as approved by the board; and [2007, c. 402, Pt. DD, §14 (AMD).]

G. Have presented to the board proof of initial licensure by examination and proof that the license and any other license or licenses granted to the applicant by any other state or states have not been suspended, revoked, canceled or otherwise restricted for any reason except nonrenewal or the failure to obtain required continuing education credits in any state where the applicant is licensed, but not engaged in the practice of pharmacy. If an otherwise qualified applicant for licensure by reciprocity has had a license suspended, revoked, cancelled or otherwise restricted for any reason, the board may assess the prior disciplinary event and in its discretion issue the license. [2005, c. 262, Pt. B, §7 (AMD).]

H. [2005, c. 262, Pt. B, §8 (RP).]

[2007, c. 402, Pt. DD, §14 (AMD) .]

2. Eligibility.

[2007, c. 402, Pt. DD, §14 (RP) .]

SECTION HISTORY
1987, c. 710, §5 (NEW). 1995, c. 257, §1 (AMD). 1999, c. 130, §7 (AMD). 2005, c. 262, §§B6-8 (AMD). 2007, c. 402, Pt. DD, §14 (AMD).

§13734. RENEWAL OF LICENSES

1. Renewal. A license expires on the date set by the commissioner pursuant to Title 10, section 8003, subsection 4 for the licensing period for which the license was issued. A renewal license is issued for each ensuing licensing period in the absence of any reason or condition that might warrant the refusal to grant a license, upon receipt by the board of the written request of the applicant and the fee for the license as set under section 13724 and upon the applicant's presenting evidence of compliance with the requirements of section 13735.

Licenses may be renewed up to 90 days after the date of expiration upon payment of a late fee as set under section 13724 in addition to the renewal fee as set under section 13724. Any person who submits an application for renewal more than 90 days after the license renewal date is subject to all requirements governing new applicants under this chapter, including a late fee, renewal fee and additional late fee as set under section 13724, except that the board may, giving due consideration to the protection of the public, waive examination if that renewal application is made within 2 years from the date of that expiration.

[2007, c. 402, Pt. DD, §15 (AMD) .]

2. Inactive renewal license. A licensed pharmacist not practicing pharmacy within this State shall pay, on or before the expiration date as determined by the commissioner, a renewal fee as set under section 13724, in return for which an inactive renewal license must be issued.

A licensed pharmacist holding an inactive renewal license who desires to practice pharmacy in this State is required to submit proof satisfactory to the board that, during the calendar year preceding application for active licensure, the pharmacist has participated in not less than 15 hours of approved courses of continuing professional pharmaceutical education as defined in section 13735. The board may make exceptions to the continuing education requirement of this section in emergency or hardship cases.

If any person fails or neglects to procure the annual inactive renewal license, after the expiration of 30 days that person's original license expires. That person, in order to regain licensure, is required to pay one renewal fee as set under section 13724 in addition to the sum of all fees that person may be in arrears.

[2007, c. 402, Pt. DD, §15 (AMD) .]

3. Fees.

[2005, c. 262, Pt. B, §9 (RP) .]

SECTION HISTORY
1987, c. 710, §5 (NEW). 1993, c. 600, §A270 (AMD). 2005, c. 262, §B9 (AMD). 2007, c. 402, Pt. DD, §15 (AMD).

§13735. CONTINUING PHARMACY EDUCATION

An annual renewal license may not be issued by the board until the applicant certifies to the board that, during the calendar year preceding an application for renewal, the applicant has participated in not less than 15 hours of approved courses of continuing professional pharmaceutical education as set out in this section. Of the 15 hours to be completed, at least 2 hours must be in board-approved courses on drug administration as

described in section 13702-A, subsection 28. A pharmacist who enters into a collaborative practice agreement must agree to complete, in each year of the agreement, 5 of the 15 hours required in this section in the areas of practice covered by the agreement. The continuing professional pharmaceutical educational courses consist of postgraduate studies, institutes, seminars, workshops, lectures, conferences, extension studies, correspondence courses or such other forms of continuing professional pharmaceutical education as may be approved by the board. [2013, c. 308, §3 (AMD).]

These courses consist of subject matter pertinent to the following general areas of professional pharmaceutical education: the socioeconomic and legal aspects of health care; the properties and actions of drugs and dosage forms; and the ideology, characteristics and therapeutics of the disease state. The specific subject matter of the courses may include, but is not limited to, pharmacology, biochemistry, physiology, pharmaceutical chemistry, pharmacy administration, drug administration as it relates to the area of permitted practice, pharmacy jurisprudence, public health and communicable diseases, pharmaceutical marketing, professional practice management, anatomy, histology and such other subject matter as represented in curricula of accredited colleges of pharmacy. The content of each course offered for credit under this continuing professional educational program must be approved in advance of the course by the board or its representative. The board may make exceptions to this section in emergency or hardship cases. [2009, c. 308, §2 (AMD).]

Each application for approval of a continuing education program or course must be submitted according to the guidelines prescribed by rule by the board, together with a fee as set under section 13724. [2007, c. 402, Pt. DD, §16 (AMD).]

SECTION HISTORY
1987, c. 710, §5 (NEW). 1999, c. 130, §8 (AMD). 2005, c. 262, §B10 (AMD). 2007, c. 402, Pt. DD, §16 (AMD). 2009, c. 308, §2 (AMD). 2013, c. 308, §3 (AMD).

Subchapter 4: DISCIPLINE HEADING: PL 1987, C. 710, §5 (NEW)

§13741. INFORMAL CONFERENCE

(REPEALED)

SECTION HISTORY
1987, c. 710, §5 (NEW). 1993, c. 600, §A271 (AMD). 1999, c. 130, §9 (AMD). 2007, c. 402, Pt. DD, §17 (AMD). 2011, c. 286, Pt. K, §1 (RP).

§13742. GROUNDS FOR DISCIPLINE

(REPEALED)

SECTION HISTORY
1987, c. 710, §5 (NEW). 1993, c. 600, §A272 (AMD). 1999, c. 130, §10 (AMD). 2007, c. 402, Pt. DD, §18 (RP).

§13742-A. DENIAL OR REFUSAL TO RENEW LICENSE; DISCIPLINARY SANCTIONS; CRIMES; CRIMINAL PROSECUTIONS

1. **Disciplinary action.** In addition to the grounds enumerated in Title 10, section 8003, subsection 5-A, paragraph A, the board may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A for:

A. Misuse of alcohol, drugs or other substances that has resulted or may result in the applicant or licensee performing duties in a manner that endangers the health or safety of patients; [2013, c. 105, §9 (AMD).]

B. A professional diagnosis of a mental or physical condition that has resulted or may result in the applicant or licensee performing duties in a manner that endangers the health or safety of patients; [2007, c. 402, Pt. DD, §19 (NEW).]

C. Engaging in unprofessional conduct by violating any standard of professional behavior, including but not limited to a breach of confidentiality of health care information pursuant to state law, that has been established in the practice for which the licensee is licensed; or [2007, c. 402, Pt. DD, §19 (NEW).]

D. Engaging in false, misleading or deceptive advertising. [2007, c. 402, Pt. DD, §19 (NEW).]

This subsection applies to all types of licenses issued by the board.

[2013, c. 105, §9 (AMD) .]

2. **Crime in course of business.** If any licensed pharmacist is convicted in state or federal court of a crime that is committed during the course of duties performed as a licensed pharmacist or committed through the use of the pharmacy in which the pharmacist is employed, or that the pharmacist owns or operates, and that demonstrates unfitness to practice as a pharmacist, including, but not limited to, convictions for defrauding the Medicaid program and for illegally distributing prescription drugs, the pharmacist's license is subject to disciplinary action as set forth in subsection 1.

[2007, c. 402, Pt. DD, §19 (NEW) .]

3. **Criminal prosecutions.** Nothing in this chapter bars criminal prosecution for any violation of this chapter when that violation is a criminal offense under the laws of this State or of the United States.

[2007, c. 402, Pt. DD, §19 (NEW) .]

SECTION HISTORY
2007, c. 402, Pt. DD, §19 (NEW). 2013, c. 105, §9 (AMD).

§13743. REINSTATEMENT

1. **Penalties.**

[2007, c. 402, Pt. DD, §20 (RP) .]

2. **Reinstatement.** Any person whose license to practice pharmacy in this State has been suspended, revoked or restricted pursuant to this chapter, whether voluntarily or by action of the board, may at reasonable intervals petition the board for reinstatement of the license. The petition must be made in writing in a form prescribed by the board. Upon investigation and hearing, the board may grant or deny the petition or it may modify its original finding to reflect any circumstances which have changed sufficiently to warrant those modifications.

[1987, c. 710, §5 (NEW) .]

3. **Criminal prosecutions.**

[2007, c. 402, Pt. DD, §20 (RP) .]

4. **Judicial review.**

[2007, c. 402, Pt. DD, §20 (RP) .]

SECTION HISTORY
1987, c. 710, §5 (NEW). 2007, c. 402, Pt. DD, §20 (AMD).

Subchapter 5: PHARMACY FACILITIES HEADING: PL 1987, C. 710, §5 (NEW); 2007, C.402, PT. DD, §34 (AMD)

§13751. REGISTRATION

1. **Licensure.** All pharmacies, manufacturers, wholesalers and mail order contact lens suppliers shall annually obtain a license from the board.

[2007, c. 402, Pt. DD, §21 (AMD) .]

2. **Classifications.** Pharmacies must be licensed in classifications set out in this subsection.

Each pharmacy must apply for a license in one of the following classifications:

A. Retail pharmacy; [2007, c. 402, Pt. DD, §22 (AMD).]

B. Mail order prescription pharmacy; [2007, c. 402, Pt. DD, §22 (AMD).]

C. Wholesale pharmacy; [2007, c. 402, Pt. DD, §22 (AMD).]

D. Rural health center; or [1999, c. 42, §4 (AMD).]

E. Free clinic. [1999, c. 42, §5 (NEW).]

[2007, c. 402, Pt. DD, §22 (AMD) .]

3. **Rules.** The board shall establish by rule the criteria that each pharmacy must meet to qualify for licensure in each classification designated in subsection 2. The board may issue various types of licenses with varying restrictions to the pharmacies referred to in subsection 2, paragraph A when the board determines it necessary by reason of the type of pharmacy requesting a license.

[2007, c. 402, Pt. DD, §23 (AMD) .]

3-A. **Mail order contact lens suppliers.** In order to meet the board's minimum licensure requirements, a mail order contact lens supplier must:

A. Apply for a license, if filling contact lens prescriptions by mail or carrier for a patient that resides in this State; [2005, c. 262, Pt. B, §11 (AMD).]

B. Pay a license fee, as set under section 13724; [2005, c. 262, Pt. B, §11 (AMD).]

C. Provide the name and address of the owner, partners or corporation and its officers; [1997, c. 117, §11 (NEW).]

D. Fill only written contact lens prescriptions containing expiration dates that do not exceed 24 months from the date of issue; [1997, c. 117, §11 (NEW).]

E. Maintain a record of every contact lens prescription filled for a period of 5 years; and [1997, c. 117, §11 (NEW).]

F. Supply, upon request, all information needed by the board to ensure compliance with this subchapter. [1997, c. 117, §11 (NEW).]

The board may adopt rules establishing additional licensure requirements and disciplinary actions for violation of this subchapter and board rules. Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

[2005, c. 262, Pt. B, §11 (AMD) .]

4. **Nonprescription drugs.** It shall be lawful for a person to sell and distribute nonprescription drugs. Any person engaging in the sale and distribution of those items shall not be deemed to be improperly engaged in the practice of pharmacy. No rule may be adopted by the board under this Act which requires the sale of nonprescription drugs by a licensed pharmacist or under the supervision of a licensed pharmacist or otherwise applies to or interferes with the sale and distribution of those medicines.

[1987, c. 710, §5 (NEW) .]

SECTION HISTORY
1987, c. 710, §5 (NEW). 1997, c. 117, §§10,11 (AMD). 1999, c. 42, §§4,5 (AMD). 2005, c. 262, §B11 (AMD). 2007, c. 402, Pt. DD, §§21-23 (AMD).

§13752. APPLICATION

1. **Procedures.** The board shall specify by rule the licensing procedures to be followed, including, but not limited to, specification of forms for use in applying for licensure and the times and places for filing an application.

[2007, c. 402, Pt. DD, §24 (AMD) .]

2. **Required information.** Applications for licenses must include the fee as set under section 13724 and the following information about the proposed pharmacy and pharmacist in charge:

A. Ownership of the pharmacy; [2007, c. 402, Pt. DD, §24 (AMD).]

B. Location of the pharmacy; [2007, c. 402, Pt. DD, §24 (AMD).]

C. Identity of the pharmacist licensed to practice in the State who will be the pharmacist in charge of the pharmacy, when one is required by this chapter, and such further information as the board may determine necessary. A pharmacist may be the pharmacist in charge for only one pharmacy, except upon the pharmacist applying for and receiving written authorization from the board. The position of pharmacist in charge may not be held by a qualified assistant pharmacist; and [2007, c. 402, Pt. DD, §24 (AMD).]

D. A certification by the pharmacist identified as the pharmacist in charge that the pharmacist has read and understands the requirements and duties of a pharmacist in charge set forth in board rules. [1999, c. 130, §11 (NEW).]

[2007, c. 402, Pt. DD, §24 (AMD) .]

3. **Transferability.** Licenses issued by the board pursuant to this chapter are not transferable or assignable.

[2007, c. 402, Pt. DD, §24 (AMD) .]

4. **Professional responsibility.** The board shall specify by rule minimum standards for the professional responsibility in the conduct of any pharmacy that has employees or personnel engaged in the practice of pharmacy. The board may require that the portion of the facility to which the license applies be operated only

under the direct supervision of no less than one pharmacist licensed to practice in this State and not otherwise and to provide such other special requirements as necessary. A change in the pharmacist in charge who is responsible for the pharmacy must be reported to the board together with the fee as set under section 13724.

[2007, c. 402, Pt. DD, §24 (AMD) .]

5. **Minimum inventory.** The board shall ascertain that the applicant has a sufficient amount of prescription inventory on location to respond appropriately to prescription orders.

[1987, c. 710, §5 (NEW) .]

SECTION HISTORY
1987, c. 710, §5 (NEW). 1999, c. 130, §11 (AMD). 2005, c. 262, §§B12-14 (AMD). 2007, c. 402, Pt. DD, §24 (AMD).

§13752-A. SITE INSPECTION REQUIRED

1. **Opening facility.** Pharmacies licensed pursuant to this subchapter may open and operate the facility only:

A. Upon the approval of the board or its representative; or [2007, c. 402, Pt. DD, §25 (AMD).]

B. Upon the pharmacist in charge certifying to the board, on forms prescribed by the board, that the facility is secure, suitable for operation as a pharmacy and in compliance with applicable federal and state laws, rules and regulations governing the practice of pharmacy. [2007, c. 402, Pt. DD, §25 (AMD).]

[2007, c. 402, Pt. DD, §25 (AMD) .]

2. **Facility inspection.** Licensed pharmacies that open and operate pursuant to subsection 1, paragraph B must be inspected by a member of the board or its representative within 30 days of opening. Facilities that are found to be insecure, not suitable for operation as a pharmacy or not in compliance with applicable federal and state laws, rules and regulations governing the practice of pharmacy are subject to a board-ordered emergency revocation of the license. The pharmacy may not operate after revocation. The emergency revocation is a final agency action and is not subject to judicial review, but a new application for licensure may be submitted pursuant to section 13752, and if approved, a site inspection must be performed pursuant to subsection 1, paragraph A.

[2007, c. 402, Pt. DD, §25 (AMD) .]

SECTION HISTORY
1999, c. 130, §12 (NEW). 2007, c. 402, Pt. DD, §25 (AMD).

§13753. NOTIFICATIONS

1. **Changes.** All licensed pharmacies shall report to the board, by mail or fax, the occurrence of any of the following changes:

A. Permanent closing which requires 14 days' prior notice to the public and to the board; [1987, c. 710, §5 (NEW).]

B. Change of ownership which requires 7 days' prior notice to the board; [1987, c. 710, §5 (NEW).]

C. Change of pharmacist in charge which requires notice no later than 7 days after the change; and [1987, c. 710, §5 (NEW).]

D. Any other matters and occurrences as the board may require by rule. [1987, c. 710, §5 (NEW).]

[2007, c. 402, Pt. DD, §26 (AMD) .]

2. **Other reportable events.** Disasters, accidents and emergencies which may affect the strength, purity or labeling of drugs, medications, devices or other materials used in the diagnosis or the treatment of injury, illness and disease shall be immediately reported to the board.

[1987, c. 710, §5 (NEW) .]

SECTION HISTORY
1987, c. 710, §5 (NEW). 2007, c. 402, Pt. DD, §26 (AMD).

§13754. VIOLATIONS AND PENALTIES

1. **Unlicensed practice.** No pharmacy licensed pursuant to section 13751 may be operated until a license has been issued to that facility by the board. Any person who violates this section is subject to the provisions of Title 10, section 8003-C.

[2007, c. 402, Pt. DD, §27 (AMD) .]

2. **Reinstatement.** Reinstatement of a license that has been suspended, revoked or restricted by the board may be granted in accordance with the procedures specified by section 13743, subsection 2.

[2007, c. 402, Pt. DD, §27 (AMD) .]

SECTION HISTORY
1987, c. 710, §5 (NEW). 2007, c. 402, Pt. DD, §27 (AMD).

§13755. VACCINE CLINICS

A pharmacy may operate a vaccine administration clinic inside, outside or off the pharmacy's premises. [2011, c. 577, §2 (NEW).]

SECTION HISTORY
2011, c. 577, §2 (NEW).

Subchapter 6: MANUFACTURERS AND WHOLESALERS HEADING: PL 1987, C. 710, §5 (NEW); 2007, C.402, PT. DD, §35 (AMD)

§13758. LICENSURE

1. **Purpose; statement of intent.** The purpose of this section is to require licensure of manufacturers and wholesalers within or outside the State. The intent of the Legislature is that the board may not adopt rules regarding companies without wholesale facilities or manufacturers' facilities located in this State that are more restrictive than federal law or regulation.

[2007, c. 402, Pt. DD, §28 (AMD) .]

2. **Licensure, manufacturers and wholesalers.** All manufacturers and wholesalers whose products are distributed in the State in any manner must be licensed by the board.

[2007, c. 402, Pt. DD, §28 (AMD) .]

3. **Licensure, individuals.** An individual who is employed by a manufacturer or wholesaler that is licensed under this subchapter need not obtain licensure under this subchapter.

[2007, c. 402, Pt. DD, §28 (AMD) .]

4. **Form.** License forms must state: Applicant's name; address; day phone; 24-hour phone; ownership status; manufacturer or wholesaler designation; Drug Enforcement Agency and Federal Drug Administration numbers; and date executed. License forms must be executed by an owner or officer of the entity, providing printed name and title.

[2007, c. 402, Pt. DD, §28 (AMD) .]

5. **Fees.** Each licensee shall pay a fee as set under section 13724.

[2007, c. 402, Pt. DD, §28 (AMD) .]

6. **Violations.** It is unlawful for manufacturers or wholesale companies to distribute prescription drugs in this State unless licensed under the provisions of this subchapter or subchapter 5.

[2007, c. 402, Pt. DD, §28 (AMD) .]

SECTION HISTORY
1987, c. 710, §5 (NEW). 1987, c. 861, §18 (AMD). 1989, c. 502, §B75 (AMD). 1997, c. 245, §11 (AMD). 2005, c. 262, §B15 (AMD). 2007, c. 402, Pt. DD, §28 (AMD).

Subchapter 7: SERVICES AT RURAL HEALTH CENTERS HEADING: PL 1987, C. 710, §5 (NEW)

§13761. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1987, c. 710, §5 (NEW).]

1. **Pharmacy provider.** "Pharmacy provider" means a pharmacy licensed in this State participating with a rural health center under this subchapter.

[1993, c. 716, §2 (AMD) .]

2. **Rural community health center.**

[1993, c. 716, §3 (RP) .]

SECTION HISTORY
1987, c. 710, §5 (NEW). 1993, c. 716, §§2,3 (AMD).

§13762. CENTER TO BE LICENSED

1. **License required.** A rural health center that desires to contract for pharmaceutical services with a pharmacy shall submit an application together with the required fee as set under section 13724. The board may adopt rules that are no more restrictive than those regulating private pharmacy practice in the State. A rural health center is eligible for licensure under this subchapter if:

A. It serves a rural area without a pharmacy; [1993, c. 716, §4 (NEW).]

B. It is located in a community where available pharmacy services can not meet the documented need; or [1993, c. 716, §4 (NEW).]

C. It requires a license in order to receive pharmaceutical discounts authorized by the federal Veterans' Health Care Act of 1992, Title VI. [1993, c. 716, §4 (NEW).]

[2005, c. 262, Pt. B, §16 (AMD) .]

2. **Renewal.** A license expires on the date set by the commissioner pursuant to Title 10, section 8003, subsection 4 for the licensing period for which the license was issued. A renewal license is issued for each ensuing licensing period in the absence of any reason or condition that might warrant the refusal to grant a license and upon receipt by the board of the written request of the applicant and the required fee for the license as set under section 13724.

Licenses may be renewed up to 90 days after the date of expiration upon payment of a late fee in addition to a renewal fee as set under section 13724. Any person who submits an application for renewal more than 90 days after the license renewal date is subject to all requirements governing new applicants under this chapter, including a late fee, renewal fee and additional late fee as set under section 13724.

[2007, c. 402, Pt. DD, §29 (AMD) .]

3. **Notice.** Any rural health center wishing to be licensed under this subchapter shall notify the board of its intent to establish a contract with a pharmacy for pharmaceutical services and shall apply for a license, submit floor plans of the physical plant and pay a required fee as set under section 13724. The application must include the name, address and registration number of the provider of pharmaceutical services.

[2005, c. 262, Pt. B, §18 (AMD) .]

4. **Board action.** The board shall approve or disapprove of the application within 60 days of receipt and shall notify the applicant in writing of its decision and the reason for the decision.

[1987, c. 710, §5 (NEW) .]

SECTION HISTORY
1987, c. 710, §5 (NEW). 1993, c. 716, §4 (AMD). 2005, c. 262, §§B16-18 (AMD). 2007, c. 402, Pt. DD, §29 (AMD).

§13763. SCOPE OF LICENSE

A licensee under this subchapter shall comply with section 13784; section 13785, subsections 1 to 7; and any applicable rules adopted by the board. No licensee may refill a prescription and all orders must be treated as new orders. In all other respects, notwithstanding any other provision of law, a licensee may provide pharmaceutical services under this subchapter subject to section 13764. A licensee may purchase drugs. [1993, c. 716, §5 (AMD).]

SECTION HISTORY
1987, c. 710, §5 (NEW). 1993, c. 716, §5 (AMD).

§13764. RULES

The board shall adopt rules in conformity with the Maine Administrative Procedure Act, Title 5, chapter 375, to carry out the purposes of this subchapter. [1987, c. 710, §5 (NEW).]

SECTION HISTORY
1987, c. 710, §5 (NEW).

Subchapter 8: THIRD-PARTY PRESCRIPTION PROGRAM ACT HEADING: PL 1987, C. 710, §5 (NEW)

§13771. SHORT TITLE

This subchapter shall be known and may be cited as the "Third-party Prescription Program Act." [1987, c. 710, §5 (NEW).]

SECTION HISTORY
1987, c. 710, §5 (NEW).

§13772. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [1987, c. 710, §5 (NEW).]

1. **Third-party prescription program.** "Third-party prescription program" means any system of providing for the reimbursement of pharmaceutical goods and services under a contractual arrangement or agreement between a provider of goods and services and another party who is not the consumer of those goods and services. These programs include, but are not limited to, insurance plans which provide coverage for prescription drugs or other pharmaceutical services.

[1987, c. 710, §5 (NEW) .]

SECTION HISTORY
1987, c. 710, §5 (NEW).

§13773. NOTICE

A 3rd-party prescription program may not be instituted in this State until the program provider has filed written notice of the provisions of the program with the Superintendent of Insurance and the board and given written notice to all pharmacies that are located within the counties covered by the program at least 30 days prior to the commencement of the program. In the case of chain or branch pharmacies, the notice must be given to the main office or headquarters. These pharmacies have 30 days from the date of notice to enroll in the program. [1997, c. 245, §12 (AMD).]

SECTION HISTORY
1987, c. 710, §5 (NEW). 1989, c. 720, §1 (AMD). 1997, c. 245, §12 (AMD).

§13774. DENIAL OF PAYMENT

No program administrator may deny to any pharmacy payment for services which may have resulted from the fraudulent or illegal use of an identification card by any person, unless the pharmacy has been notified that the card has been canceled or discontinued and that the program administrator has been unsuccessful in attempting to regain possession of the card. [1987, c. 710, §5 (NEW).]

SECTION HISTORY
1987, c. 710, §5 (NEW).

§13775. REIMBURSEMENT RATES

A 3rd-party prescription program is prohibited from charging a pharmacy a registration fee or other fixed charge, either annually or otherwise, except in cases where a charge is necessary to specifically cover any equipment, forms or materials required by the program. [1987, c. 710, §5 (NEW).]

SECTION HISTORY
1987, c. 710, §5 (NEW).

§13776. CONTRACT RENEWAL AND CHANGES

Any changes in benefits or provisions in any contract may not be made unilaterally by either the program administrator or the pharmacy. Any change in a contract offered to one pharmacy shall be offered to all the state pharmacies participating in the program. [1987, c. 710, §5 (NEW).]

SECTION HISTORY
1987, c. 710, §5 (NEW).

§13777. EXCEPTIONS

This Act does not apply to any medical assistance or public health programs administered by the Department of Health and Human Services, including, but not limited to, the Medicaid program and the Low Cost Drug Program; to any employee benefit plan that is subject to the Employee Retirement Income Security Act of 1974, 29 United States Code, Section 1001, et seq.; and to any 3rd-party prescription programs administered in accordance with and subject to the limitations of the former Nonprofit Service Organizations Preferred Provider Arrangement Act of 1985, Title 24, chapter 19, subchapter II, or the Preferred Provider Arrangement Act, Title 24-A, chapter 32. [1999, c. 790, Pt. A, §39 (AMD); 2003, c. 689, Pt. B, §6 (REV).]

SECTION HISTORY
1987, c. 710, §5 (NEW). 1989, c. 720, §2 (AMD). 1999, c. 790, §A39 (AMD). 2003, c. 689, §B6 (REV).

Subchapter 9: MISCELLANEOUS PROVISIONS
HEADING: PL 1987, C. 710, §5 (NEW)

§13781. GENERIC AND THERAPEUTICALLY EQUIVALENT SUBSTITUTION

A written prescription issued by a practitioner in this State may contain a box in the lower right-hand corner of the prescription form. The following words must appear to the left of this box: "Any drug which is the generic and therapeutic equivalent of the drug specified above in this prescription must be dispensed, provided that no check mark ( ) has been handwritten in the box in the lower right-hand corner." [2003, c. 384, §1 (AMD).]

Except with regard to a patient who is paying for a drug with the patient's own resources, any pharmacist receiving a prescription in which no handwritten check mark ( ) is found in the box provided shall substitute a generic and therapeutically equivalent drug for the drug specified on the prescription if the substituted drug is distributed by a business entity doing business in the United States that is subject to suit and the service of legal process in the United States and the price of the substituted drug does not exceed the price of the drug specified by the practitioner; except that, when the cost of a prescription is to be reimbursed under the MaineCare program pursuant to Title 22, chapter 855, the pharmacist shall substitute a generic and therapeutically equivalent drug only when the Department of Health and Human Services has determined that the substitute drug would be a more cost-effective alternative than the drug prescribed by the practitioner. Except for prescribed drugs listed under the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 United States Code, Section 812, as amended, as Schedule II drugs, with regard to a patient who is paying

for a drug with the patient's own resources, a pharmacist shall inquire about the patient's preference for either the brand-name drug or generic and therapeutically equivalent drug and dispense the drug that the patient prefers. [2007, c. 85, §1 (AMD).]

Except with regard to a patient who is paying for a drug with the patient's own resources, if a written prescription issued by a practitioner in this State does not contain the box described in this section, a pharmacist shall substitute a generic and therapeutically equivalent drug for the drug specified on the prescription if the substituted drug is distributed by a business entity doing business in the United States that is subject to suit and the service of legal process in the United States and the price of the substituted drug does not exceed the price of the drug specified by the practitioner, unless a practitioner has handwritten on the prescription form, along with the practitioner's signature, "dispense as written," "DAW," "brand," "brand necessary" or "brand medically necessary"; except that, when the cost of a prescription is to be reimbursed under the MaineCare program pursuant to Title 22, chapter 855, the pharmacist shall substitute a generic and therapeutically equivalent drug only when the Department of Health and Human Services has determined that the substitute drug would be a more cost-effective alternative than the drug prescribed by the practitioner. Except for prescribed drugs listed under the Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 United States Code, Section 812, as amended, as Schedule II drugs, with regard to a patient who is paying for a drug with the patient's own resources, a pharmacist shall inquire about the patient's preference for either the brand-name drug or generic and therapeutically equivalent drug and dispense the drug that the patient prefers. [2007, c. 85, §2 (AMD).]

Any pharmacist who substitutes a generic and therapeutically equivalent drug under this section shall inform the person to whom the drug is dispensed of the substitution. When any substitution is made under this section, the pharmacist shall cause the name of the generic and therapeutically equivalent drug, the name or abbreviation of the drug manufacturer or distributor of that substitute drug and all other information as required by section 13794 to appear on the container label of the drug dispensed. [1987, c. 710, §5 (NEW).]

This section does not apply to prescriptions ordered by practitioners for patients in hospitals when those prescriptions are filled by a hospital pharmacy or in any institution where a formulary system is established. [1987, c. 710, §5 (NEW).]

SECTION HISTORY
1987, c. 710, §5 (NEW). 1997, c. 245, §§13,14 (AMD). 2003, c. 384, §1 (AMD). 2003, c. 689, §B6 (REV). 2007, c. 85, §§1, 2 (AMD).

§13782. ADVERTISING

It is lawful for any pharmacy, pharmacist or other licensee of the board to advertise to the public the current retail price charged for any drugs, medicines or appliances as defined in the United States Code, Title 21, Section 3211 (g) (1) which bears the legend "Caution: Federal law prohibits dispensing without prescription." The advertising may be according to either the brand name or the generic name of the drug. No media advertising of any drugs included in the United States Comprehensive Drug Abuse Prevention and Control Act of 1970, 84 Stat. 1236, is permitted. [1987, c. 710, §5 (NEW).]

SECTION HISTORY
1987, c. 710, §5 (NEW).

§13782-A. PRICE DISCLOSURE

1. **Price disclosure required.** A pharmacist or pharmacy technician employed by a pharmacy shall disclose upon the request of any person making an inquiry in person or by telephone the price of any brand or generic drug sold by that pharmacy.

[2007, c. 402, Pt. DD, §30 (AMD) .]

2. **Information required for price disclosure.** In order to have sufficient information to disclose a prescription price, a pharmacist or pharmacy technician may ask the person making the inquiry for the following information:

A. The brand or generic name of the medication; [1997, c. 245, §15 (NEW).]

B. The dose or strength of the medication, if applicable; or [1997, c. 245, §15 (NEW).]

C. The quantity of the medication. [1997, c. 245, §15 (NEW).]

[1997, c. 245, §15 (NEW) .]

3. **Information not provided.** If the inquiring person can not provide some or all of the information in subsection 2 and this information is necessary for the requested price to be determined, then the pharmacist or pharmacy technician may contact the prescribing practitioner in order to obtain the necessary information prior to disclosing the prescription price.

[1997, c. 245, §15 (NEW) .]

SECTION HISTORY
1997, c. 245, §15 (NEW). 2007, c. 402, Pt. DD, §30 (AMD).

§13783. POSTING PRICES

(REPEALED)

SECTION HISTORY
1987, c. 710, §5 (NEW). 1997, c. 245, §16 (RP).

§13784. PATIENT INFORMATION REGULATION

1. **Explanation by pharmacist.** With each new prescription dispensed, the pharmacist, in addition to labeling the prescription in accordance with the requirements of the State, must orally explain to the patient or the patient's agent the directions for use and any additional information, in writing if necessary, to assure the proper utilization of the medication or device prescribed. For those prescriptions delivered outside the confines of the pharmacy, the explanation shall be by telephone or in writing. This section does not apply to those prescriptions for patients in hospitals or institutions where the medication is to be administered by a nurse or other individual licensed to administer medications or to those prescriptions for patients who are to be discharged from a hospital or institution.

[1987, c. 710, §5 (NEW) .]

2. **Maintenance of current reference material.** To ensure that proper information is available to each pharmacist, each pharmacy or pharmacist shall maintain current reference material on drug interactions.

[1987, c. 710, §5 (NEW) .]

3. **Retail price.** With each prescription dispensed, the pharmacist shall disclose to the patient in writing the usual and customary price of the prescription and the cost of any payment toward the price required of the patient.

[2003, c. 2, §120 (AFF); 2003, c. 375, §1 (NEW) .]

SECTION HISTORY
1987, c. 710, §5 (NEW). RR 2003, c. 2, §120 (AFF). 2003, c. 375, §1 (AMD). 2003, c. 375, §2 (AFF).

§13785. PATIENT PROFILE RECORD SYSTEM REGULATION

A patient profile record system shall be maintained in all pharmacies for persons for whom prescriptions are dispensed. The patient profile record system shall be devised to enable the immediate retrieval of information necessary for the dispensing pharmacist to identify previously dispensed medication at the time a prescription is presented for dispensing. One profile record or document may be maintained for all members of a family living at the same address and possessing the same family name. The following information shall be recorded: [1987, c. 710, §5 (NEW).]

1. **Name.** The family name and the first name of the person for whom the medication is intended;

[1987, c. 710, §5 (NEW) .]

2. **Address.** The address to correspond to the name in subsection 1;

[1987, c. 710, §5 (NEW) .]

3. **Age group.** An indication of the patient's age group, that is, infant, child or adult;

[1987, c. 710, §5 (NEW) .]

4. **Original date of dispensing.** The original date the medication is dispensed pursuant to the receipt of a practitioner's prescription;

[1987, c. 710, §5 (NEW) .]

5. **Prescription identification.** The number or designation identifying the prescription;

[1987, c. 710, §5 (NEW) .]

6. **Prescriber's name.** The name of the person prescribing the drug or device;

[1987, c. 710, §5 (NEW) .]

7. **Drug information.** The name, strength and quantity of the drug; and

[1987, c. 710, §5 (NEW) .]

8. **Initials of pharmacist; date of refill.** The initials of the dispensing pharmacist and the date of dispensing the medication as a renewal or refill, if those initials and that date are not recorded on the back of the original prescription.

[1987, c. 710, §5 (NEW) .]

The pharmacist shall attempt to ascertain and shall record any allergies and idiosyncrasies of the patient and any chronic conditions which may relate to drug utilization as communicated to the pharmacy by the patient. [1987, c. 710, §5 (NEW).]

Upon receipt of a prescription, a pharmacist shall examine the patient's profile record before dispensing the medication to determine the possibility of a harmful drug interaction or reaction. Upon recognizing a potentially harmful reaction or interaction, the pharmacist shall take appropriate action to avoid or minimize the problem which may include consultation with the practitioner. [1987, c. 710, §5 (NEW).]

A patient profile record must be maintained for a period of not less than the amount of time required under federal Medicare laws, beginning from the date of the last entry in the profile record. As used in this section, "Medicare" means the Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965, as amended. [1999, c. 130, §13 (AMD).]

SECTION HISTORY
1987, c. 710, §5 (NEW). 1999, c. 130, §13 (AMD).

§13786. IDENTIFICATION OF PERSONS PRESCRIBING MEDICINES ON HOSPITAL PRESCRIPTION BLANKS

Any practitioner who writes a prescription upon a prescription blank of a hospital or clinic shall sign that practitioner's name and cause that name to be printed, stamped or typed on the blank. [1987, c. 710, §5 (NEW).]

This section applies to any physician's assistant or registered nurse who writes a prescription while working under the control or supervision of a physician. In case of the physician's assistant or registered nurse, the name of the physician under whom the assistant or nurse works shall be printed, stamped or typed on the blank. [1987, c. 710, §5 (NEW).]

SECTION HISTORY
1987, c. 710, §5 (NEW).

§13786-A. SECURITY REQUIREMENTS; RULES

1. **Rules.** The Department of Public Safety, after consultation with the Board of Osteopathic Licensure, the Board of Licensure in Medicine and the Board of Pharmacy, shall adopt rules that establish security requirements for all written prescriptions for schedule II drugs issued by health care providers. For purposes of this section, "schedule II drug" has the same meaning as in the federal Controlled Substances Act of 1970, 21 United States Code, Section 812. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter II-A and must be brought back for review by the joint standing committee of the Legislature having jurisdiction over criminal justice matters during the 2nd Regular Session of the 120th Legislature. The rules must include a procedure to obtain a waiver for prescription blanks that provide substantially equivalent protection against forgery. The rules must deal with the following subjects:

A. Measures designed to prevent unauthorized copying of a completed or blank prescription form; [2001, c. 419, §23 (NEW).]

B. Measures designed to prevent the erasure or modification of information written on the prescription by the prescribing health care provider; and [2001, c. 419, §23 (NEW).]

C. Measures to prevent the use of counterfeit prescription forms. [2001, c. 419, §23 (NEW).]

[2001, c. 419, §23 (NEW) .]

2. **Out-of-state prescription security requirements.** Notwithstanding any law or rule to the contrary, a prescription for a schedule II drug written by an out-of-state practitioner on a prescription blank that does not comply with the requirements for a security prescription blank, as defined in the Department of Public Safety rule pursuant to subsection 1, may be filled by a pharmacist only if:

A. The pharmacist receives and makes a record of oral confirmation of the validity of the prescription from the out-of-state practitioner or the practitioner's agent and the pharmacist makes a reasonable effort to determine that the oral confirmation came from the practitioner or the practitioner's agent, which may include a telephone call to the practitioner's telephone number listed in a telephone directory or other directory or other good faith efforts to confirm the identity of the person giving the oral confirmation; and [2003, c. 326, §1 (NEW).]

B. The pharmacist demands, inspects and records a valid photographic identification from any person presenting a prescription or receiving a filled prescription unless:

(1) The person is the patient for whom the prescription is written;

(2) The person's identity is personally known to the pharmacist; and

(3) The pharmacist confirms by reviewing the pharmacy records that the pharmacist has previously demanded, inspected and recorded a valid photographic identification from the person. [2003, c. 326, §1 (NEW).]

[2003, c. 326, §1 (NEW) .]

3. **Valid photographic identification.** For the purposes of subsection 2, a valid photographic identification is limited to the following:

A. A valid Maine motor vehicle operator's license; [2003, c. 326, §1 (NEW).]

B. A valid Maine identification card issued under Title 29-A, section 1410; [2003, c. 326, §1 (NEW).]

C. A valid United States passport; or [2003, c. 326, §1 (NEW).]

D. A valid passport or motor vehicle operator's license of another state, territory or possession of the United States or a foreign country only if it:

(1) Contains a photograph of the person presenting the prescription;

(2) Is encased in tamper-resistant plastic or is otherwise tamper-resistant; and

(3) Identifies the date of birth of the person presenting the prescription. [2003, c. 326, §1 (NEW).]

[2003, c. 326, §1 (NEW) .]

4. **Partial filling of out-of-state prescriptions.** The partial filling of a prescription for a schedule II drug written by an out-of-state practitioner on a prescription blank that does not comply with the requirements for a security prescription blank, as defined in the Department of Public Safety rule pursuant to subsection 1, is permissible if the pharmacist is unable after reasonable effort to obtain the oral confirmation described in subsection 2 in the case of the practitioner's office being closed during nights, weekends or holidays. The partial filling is limited to a 72-hour supply of the controlled substance. The remaining portion of the prescription may be filled within the 72-hour period upon obtaining the oral confirmation. No further quantity may be filled beyond the 72 hours without a new prescription.

[2003, c. 326, §1 (NEW) .]

SECTION HISTORY
2001, c. 419, §23 (NEW). 2003, c. 326, §1 (AMD).

§13787. HYPODERMIC SYRINGES; PRESCRIPTIONS

(REPEALED)

SECTION HISTORY
1987, c. 710, §5 (NEW). 1993, c. 394, §1 (RP).

§13787-A. SALE OF HYPODERMIC APPARATUS

1. **Authorized seller.** A hypodermic apparatus, as defined in Title 17-A, section 1101, subsection 2, may be sold only by a manufacturer or dealer of embalming supplies, manufacturer or dealer of medical or dental supplies, wholesale druggist, manufacturing pharmacist, pharmacist, veterinarian, agricultural supply store or manufacturer of surgical instruments.

[1993, c. 394, §2 (NEW) .]

2. **Purchaser.** Any person who is 18 years of age or older may purchase a hypodermic apparatus from a seller described in subsection 1.

[1993, c. 394, §2 (NEW) .]

3. **Criminal immunity.** Immunity from criminal prosecution is governed by the following.

A. A seller described in subsection 1 is "expressly authorized" within the meaning of Title 17-A, section 1110, subsection 1-B, paragraph A. [2003, c. 688, Pt. A, §39 (AMD).]

B. A seller described in subsection 1 or a purchaser described in subsection 2 is "expressly authorized" within the meaning of Title 17-A, section 1111, subsection 1, paragraph A. [1993, c. 394, §2 (NEW).]

[2003, c. 688, Pt. A, §39 (AMD) .]

4. **Immunity limited.** This section does not limit prosecution for violation of any law prohibiting or regulating the use, possession, dispensing, distribution or promotion of controlled substances, scheduled drugs or drug paraphernalia.

[1993, c. 394, §2 (NEW) .]

5. **Medicaid not affected.** This section does not diminish, expand or otherwise affect Medicaid reimbursement for hypodermic apparatuses.

[1993, c. 394, §2 (NEW) .]

SECTION HISTORY
1993, c. 394, §2 (NEW). 2003, c. 688, §A39 (AMD).

§13788. SALE OF POISONOUS DRUGS

Each licensed pharmacist who sells a poison shall affix to the package sold a label plainly marked with the name and address of the store and the word "POISON" and the name of the poison sold, and shall enter at the time of sale in a permanently bound book to be kept for that purpose the name and address of the purchaser, the date of sale, the name of the poison and the quantity sold and the person making the sale shall sign the entry. This section shall not apply to sales on prescription of practitioners, sales at wholesale to pharmacists or sales to hospitals, colleges or public institutions. [1987, c. 710, §5 (NEW).]

SECTION HISTORY
1987, c. 710, §5 (NEW).

§13789. POSSESSION OF DRUG SAMPLES

No person may purchase manufacturers' drug samples from any person for purposes of resale. If those samples are given gratuitously to a licensed pharmacist, qualified assistant pharmacist or medical practitioner, any such sample may be given to any person, as long as the sample is kept in containers suitably labeled to conform to the Federal Food and Drug Act and the state food and drug laws and this gift is subject to the laws relating to the sale of drugs. [2007, c. 402, Pt. DD, §31 (AMD).]

SECTION HISTORY
1987, c. 710, §5 (NEW). 2007, c. 402, Pt. DD, §31 (AMD).

§13790. USING DRUGS NOT IN PRESCRIPTION

If a pharmacist knowingly uses any drugs or ingredients in preparing or compounding a written or oral prescription of any practitioner different from those named in the prescription, that use shall constitute a civil violation for which a forfeiture of not more than $1,000 nor less than $50 may be adjudged. [1987, c. 710, §5 (NEW).]

SECTION HISTORY
1987, c. 710, §5 (NEW).

§13791. RETURN OF DRUGS

A drug or pharmaceutical preparation that has been dispensed on prescription may be returned to pharmacy stock after being in possession and under the control of another person and may be dispensed again if the drug is packaged in an unbroken, sealed container or if, in the case of a hospital, a licensed pharmacist determines that the drug has not been impaired. [1993, c. 231, §1 (AMD).]

SECTION HISTORY
1987, c. 710, §5 (NEW). 1993, c. 231, §1 (AMD).

§13792. SALE BY CERTAIN METHODS PROHIBITED

It shall be unlawful for any person to sell, distribute, vend or otherwise dispose of any drug, medicine or pharmaceutical or medical preparation by means of any public exhibition, entertainment, performance, carnival or by vending machines. [1987, c. 710, §5 (NEW).]

SECTION HISTORY
1987, c. 710, §5 (NEW).

§13793. ADULTERATING AND SELLING DRUGS

Whoever fraudulently adulterates, for the purpose of sale, any drug or medicine or sells any fraudulently adulterated drug or medicine, knowing the same to be adulterated, shall be punished by a fine of not more than $1,000 or by imprisonment for not more than 11 months. These adulterated drugs and medicines shall be forfeited and destroyed under the direction of the court. [1987, c. 710, §5 (NEW).]

SECTION HISTORY
1987, c. 710, §5 (NEW).

§13794. LABELING OF PRESCRIPTIONS

Every drug dispensed pursuant to prescription, whether for a legend drug or not, must carry on the label the following information: the prescription number; the date of filling; the patient's name; directions for use; the name and strength of the drug and the amount dispensed, including either the brand name of the drug or, if a generic and therapeutically equivalent drug is dispensed it must be in accordance with section

13781; the beyond use date of the drug; the name of the practitioner prescribing the drug; and the name, address and telephone number of the pharmacy where the prescription was compounded and dispensed. For purposes of this section, "beyond use date" means a date beyond which the contents of the prescription are not recommended to be used. [1999, c. 130, §14 (AMD).]

A drug dispensed in accordance with the provisions of Title 22, chapter 251, subchapter 3, article 5 does not require the name of the patient's sexual partner on the label. [2009, c. 533, §5 (NEW).]

SECTION HISTORY
1987, c. 710, §5 (NEW). 1999, c. 130, §14 (AMD). 2009, c. 533, §5 (AMD).

§13795. PHOTOGRAPHIC PROOF OF IDENTIFICATION; DISCRETION TO SELL OR DISPENSE; IMMUNITY

1. **Photographic proof of identification.** As a precondition to filling any prescription, dispensing any drug or selling any targeted methamphetamine precursor, a pharmacist or person acting at the direction of a pharmacist may demand, inspect and record proof of identification, including valid photographic identification, from any patient presenting a prescription or any person acting on behalf of the patient or person purchasing a targeted methamphetamine precursor. Valid photographic identification includes but is not limited to the following:

A. A valid Maine motor vehicle operator's license; [1995, c. 175, §1 (NEW).]

B. A valid Maine identification card issued under Title 29-A, section 1410; [1997, c. 437, §46 (AMD).]

C. A valid United States passport; [1995, c. 175, §1 (NEW).]

D. A valid passport, motor vehicle operator's license of another state, territory, possession or foreign country or official identification card issued by the United States Government only if it:

(1) Contains a photograph of the person presenting the identification;

(2) Is encased in tamper-resistant plastic or otherwise possesses indicia of tamper-resistance; and

(3) Identifies the person's date of birth; or [2005, c. 430, §7 (AMD); 2005, c. 430, §10 (AFF).]

E. Other valid, tamper-resistant, photographic identification as provided in rules adopted by the board pursuant to section 13722, subsection 1, paragraph A and in accordance with Title 5, chapter 375. [1997, c. 245, §17 (AMD).]

[2005, c. 430, §7 (AMD); 2005, c. 430, §10 (AFF) .]

2. **Refusal to fill prescription, dispense drug or sell targeted methamphetamine precursor; law enforcement reporting.** A pharmacist or person acting at the direction of a pharmacist may exercise discretion and refuse to fill any prescription, dispense any drug or sell any targeted methamphetamine precursor if unsatisfied as to the legitimacy or appropriateness of any prescription presented, the validity of any photographic identification or the identity of any patient presenting a prescription or any person acting on behalf of the patient, or the intention of the customer to use the drug or targeted methamphetamine precursor according to the instructions for use. A pharmacist or person acting at the direction of a pharmacist may make a report to a law enforcement agency when that person has reasonable cause to suspect that a prescription is not legitimate or appropriate, that a person has presented photographic identification that is not valid or that a customer has the intention to use a drug or targeted methamphetamine precursor in a manner inconsistent with the instructions for use.

[2005, c. 430, §7 (AMD); 2005, c. 430, §10 (AFF) .]

3. **Immunity; presumption of good faith.** A pharmacist or person acting at the direction of a pharmacist who in good faith and pursuant to subsection 2 refuses to fill any prescription, dispense any drug or sell any targeted methamphetamine precursor or who makes a report to a law enforcement agency is immune from any civil liability that might otherwise result from that action, including, but not limited to, any civil liability that might otherwise arise under state or local laws or rules regarding confidentiality of information. In a proceeding regarding immunity from liability, there is a rebuttable presumption of good faith.

[2005, c. 430, §7 (NEW); 2005, c. 430, §10 (AFF) .]

4. **Record keeping.** With regard to purchases of targeted methamphetamine precursors, a pharmacy may keep a log of information about the purchaser, which may include name, date of birth, address and amount of targeted methamphetamine precursors purchased.

[2005, c. 430, §7 (NEW); 2005, c. 430, §10 (AFF) .]

5. **Rulemaking.** The Commissioner of Health and Human Services may adopt rules to implement this subsection. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

A. If the Director of the Maine Drug Enforcement Agency within the Department of Public Safety finds that the ease of availability of liquid, liquid-filled capsule or glycerin matrix forms of products containing ephedrine, pseudoephedrine or phenylpropanolamine or their salts, isomers or salts of isomers, either alone or in combination with other ingredients, referred to in this paragraph as "products," is a threat to the public health, safety and welfare, then the Director of the Maine Drug Enforcement Agency shall notify the Commissioner of Health and Human Services. The Commissioner of Health and Human Services shall consult with the joint standing committee of the Legislature having jurisdiction over health and human services matters, providing the reasons for undertaking rulemaking, and may, after consultation, adopt rules designating the products as targeted methamphetamine precursors pursuant to section 13702-A, subsection 33, paragraph B. [2011, c. 657, Pt. AA, §84 (AMD).]

B. If the Director of the Maine Drug Enforcement Agency finds that sales of targeted methamphetamine precursors that are made without verifying the identity of the purchaser pose a threat to public health, safety and welfare, then the Director of the Maine Drug Enforcement Agency shall notify the Commissioner of Health and Human Services. The Commissioner of Health and Human Services shall consult with the joint standing committee of the Legislature having jurisdiction over health and human services matters, providing the reasons for undertaking rulemaking, and may, after consultation, adopt rules requiring a person making a sale of a targeted methamphetamine precursor pursuant to section 13796 to demand from the purchaser and to inspect and record prior to the sale proof of identification, including valid photographic identification, and to keep a log of sales. [2011, c. 657, Pt. AA, §84 (AMD).]

[2011, c. 657, Pt. AA, §84 (AMD) .]

SECTION HISTORY
1995, c. 175, §1 (NEW). 1997, c. 245, §17 (AMD). 1997, c. 437, §46 (AMD). 2005, c. 430, §7 (AMD). 2005, c. 430, §10 (AFF). 2007, c. 695, Pt. B, §18 (AMD). 2011, c. 657, Pt. AA, §84 (AMD).

§13796. RETAIL SALE OF TARGETED METHAMPHETAMINE PRECURSORS

1. **Definitions.**

[2011, c. 584, §1 (RP) .]

1-A. **Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Electronic logging system" means a system that:

(1) Blocks the illegal sale of over-the-counter cold and allergy medications containing a targeted methamphetamine precursor;

(2) Is available free of charge to the State and its taxpayers, retailers and law enforcement;

(3) Operates in real time and communicates across state lines in real time with similar systems; and

(4) Complies with the requirements of the national Criminal Justice Information Exchange or its successor program and the National Information Exchange Model or its successor program. [2011, c. 584, §2 (NEW).]

B. "Override function" means a function in an electronic logging system that may be used to override a stop-sale alert and allows the completion of a sale. [2011, c. 584, §2 (NEW).]

C. "Package" means an item packaged and marked for retail sale that is not designed to be broken down or subdivided for the purpose of retail sale. [2011, c. 584, §2 (NEW).]

D. "Retailer" or "retail store" means a person or business entity engaged in this State in the business of selling products to the general public on a retail basis, including pharmacies. [2011, c. 584, §2 (NEW).]

E. "Sale" or "sold" includes barter, exchange, transfer and gift. [2011, c. 584, §2 (NEW).]

F. "Stop-sale alert" means a notification that alerts the retailer that completion of the sale would result in the seller's or purchaser's violating the targeted methamphetamine precursor quantity limits. [2011, c. 584, §2 (NEW).]

[2011, c. 584, §2 (NEW) .]

2. **Restrictions on packaging.**

[2013, c. 223, §1 (RP) .]

3. **Restrictions on the sale of targeted methamphetamine precursors.** The following restrictions on location in the retail store, manner of sale and amount of sale apply to sales of targeted methamphetamine precursors. The limits under this subsection on the amount of targeted methamphetamine precursors that may be sold apply to the total amount of base ephedrine, phenylpropanolamine and pseudoephedrine contained in packages and not the overall weight of the packages.

A. A retailer may not sell to the same person a targeted methamphetamine precursor that causes the sales to that person of targeted methamphetamine precursors within a 24-hour period to exceed 3.6 grams. [2011, c. 584, §3 (AMD).]

A-1. A person may not purchase more than 3.6 grams of a targeted methamphetamine precursor within a 24-hour period. [2011, c. 584, §3 (NEW).]

A-2. A retailer may not sell to the same person a targeted methamphetamine precursor that causes the sale to that person of targeted methamphetamine precursors within a 30-day period to exceed 9 grams. [2011, c. 584, §3 (NEW).]

A-3. A person may not purchase more than 9 grams of a targeted methamphetamine precursor within a 30-day period. [2011, c. 584, §3 (NEW).]

B. Except with regard to single-dose packages of not more than 60 milligrams that are kept within 30 feet and in direct line of sight of a staffed cash register or store counter, a retailer shall keep targeted methamphetamine precursors in a location that is locked or otherwise not accessible by customers. [2011, c. 584, §3 (AMD).]

C. Except with regard to single-dose packages of not more than 60 milligrams that are kept within 30 feet and in direct line of sight of a staffed cash register or store counter, the sale of targeted methamphetamine precursors must be completed by:

(1) A licensed pharmacist or licensed pharmacy technician; or

(2) An employee of the retailer who accepts payment for the targeted methamphetamine precursor as long as:

(a) The employee works under the direct supervision of a pharmacist in the pharmacy area of the retail store; and

(b) A licensed pharmacist or licensed pharmacy technician has given individual, express approval for the purchase. [2007, c. 402, Pt. DD, §33 (AMD).]

D. Except with regard to single-dose packages of not more than 60 milligrams that are kept within 30 feet and in direct line of sight of a staffed cash register or store counter, a retailer shall require a person purchasing a targeted methamphetamine precursor to present a valid government-issued photograph identification document at the point of sale. A retailer shall record the:

(1) Name and address of the purchaser;

(2) Name of the targeted methamphetamine precursor purchased including the number of grams the product contains;

(3) Date and time of purchase; and

(4) Form of identification presented, issuing government entity and corresponding identification number. [2011, c. 584, §3 (NEW).]

E. Except with regard to single-dose packages of not more than 60 milligrams that are kept within 30 feet and in direct line of sight of a staffed cash register or store counter, a retailer shall maintain a written or electronic logbook and require a person purchasing a targeted methamphetamine precursor to sign the logbook. A purchaser must sign the logbook acknowledging that the purchaser understands the applicable sales limit and that providing false statements or misrepresentations in the logbook may subject the purchaser to criminal penalties under 18 United States Code, Section 1001. [2011, c. 584, §3 (NEW).]

[2011, c. 584, §3 (AMD) .]

4. **Exceptions.** The provisions of this section do not apply to a targeted methamphetamine precursor that is obtained by prescription or by sale or transfer in the regular course of lawful business to a veterinarian, physician, pharmacist, retail distributor, wholesaler, manufacturer, warehouse operator or common carrier or an agent of that person or entity.

[2005, c. 430, §8 (NEW); 2005, c. 430, §10 (AFF) .]

5. **Electronic logging.** Beginning January 1, 2013, a retailer who has access to the Internet shall, before completing a sale under this section, electronically submit the information obtained pursuant to subsection 3, paragraph D to an electronic logging system. If the electronic logging system generates a stop-sale alert, the retailer may not complete the sale. If the retailer has concern for personal safety or the safety of others if a sale is not completed, the retailer may use the system's override function to complete the sale and must maintain a log of the sale. If the retailer experiences mechanical or electronic failure of the electronic logging system and is unable to comply with the electronic logging requirement, the retailer shall maintain a written log or an alternative electronic record-keeping mechanism until such time as the retailer is able to comply with the electronic logging requirement.

[2011, c. 584, §4 (NEW) .]

6. **Immunity; presumption of good faith.** A retailer is immune from liability for any claims, costs, expenses, injuries, liabilities, losses or damages of any kind resulting from the retailer's use of the electronic logging system in accordance with this section unless the injury or loss is the result of willful, reckless or intentional misconduct by the retailer. In a civil proceeding in which the retailer's use of an electronic logging system pursuant to this section is an issue, there is a rebuttable presumption of good faith on the part of the retailer.

[2011, c. 584, §4 (NEW) .]

7. **Political subdivision ordinances.** A political subdivision, as defined in Title 30-A, section 2252, may not adopt an ordinance regulating the sale or purchase of a targeted methamphetamine precursor, and any ordinance that violates this subsection is void and has no force or effect.

[2011, c. 584, §4 (NEW) .]

SECTION HISTORY
2005, c. 430, §8 (NEW). 2005, c. 430, §10 (AFF). 2007, c. 402, Pt. DD, §§32, 33 (AMD). 2011, c. 584, §§1-4 (AMD). 2013, c. 223, §1 (AMD).

§13797. PRESCRIPTION DRUG PRICE INFORMATION

A pharmacist or person acting at the direction of a pharmacist who is asked for consumer price information regarding prescription drugs shall provide to the consumer, on the telephone or in person, depending on the circumstances, the current usual and customary price for cash customers and, if reasonably obtainable by the pharmacist or person acting at the direction of the pharmacist, the price applicable to the consumer. A pharmacy shall post a notice to consumers informing them that they may obtain current usual and customary price information from the pharmacist. [2005, c. 610, §1 (NEW).]

SECTION HISTORY
2005, c. 610, §1 (NEW).

§13798. EXPEDITED PARTNER THERAPY

An individual licensed under this chapter may not be disciplined for dispensing drugs pursuant to a lawful prescription in accordance with the provisions of Title 22, chapter 251, subchapter 3, article 5. [2009, c. 533, §6 (NEW).]

SECTION HISTORY
2009, c. 533, §6 (NEW).

§13799. CONSUMER CHOICE PRESERVED

Nothing in this chapter may be construed to prohibit: [2013, c. 373, §2 (NEW).]

1. **Ordering or receiving prescription drugs.** An individual who is a resident of the State from ordering or receiving prescription drugs for that individual’s personal use from outside the United States by mail or carrier from a licensed retail pharmacy described in section 13731, subsection 1, paragraph B or an entity described in section 13731, subsection 1, paragraph C; or

[2013, c. 373, §2 (NEW) .]

2. **Dispensing or providing prescription drugs.** A licensed retail pharmacy described in section 13731, subsection 1, paragraph B or an entity described in section 13731, subsection 1, paragraph C from dispensing, providing or facilitating the provision of prescription drugs from outside the United States by mail or carrier to a resident of the State for that resident's personal use.

[2013, c. 373, §2 (NEW) .]

SECTION HISTORY
2013, c. 373, §2 (NEW).

Subchapter 10: NONDISCRIMINATION IN PHARMACEUTICALS PRICING HEADING: PL 1993, C. 716, §6 (NEW); PL 1999, C. 574, §1 (RP)

§13801. DEFINITIONS

(REPEALED)

SECTION HISTORY
1993, c. 716, §6 (NEW). 1999, c. 574, §1 (RP).

§13802. PRICE DISCRIMINATION PROHIBITED

(REPEALED)

SECTION HISTORY
1993, c. 716, §6 (NEW). 1999, c. 574, §1 (RP).

§13803. PURCHASES BY STATE

(REPEALED)

SECTION HISTORY
1993, c. 716, §6 (NEW). 1999, c. 574, §1 (RP).

§13804. EXCEPTIONS

(REPEALED)

SECTION HISTORY
1993, c. 716, §6 (NEW). 1995, c. 548, §1 (AMD). 1999, c. 574, §1 (RP).

§13805. ENFORCEMENT

(REPEALED)

SECTION HISTORY
1993, c. 716, §6 (NEW). 1999, c. 574, §1 (RP).

Subchapter 11: NONCONTROLLED PRESCRIPTION DRUG DISPENSING AND ADMINISTRATION (HEADING: PL 1997, C. 109, §1 (NEW); PL 2007, C. 669, §3 (AMD))

§13810. DRUG ADMINISTRATION BY NURSES UNDER CERTAIN CONDITIONS

A professional nurse or an advanced practice registered nurse who is an employee of a home health care provider, as defined in Title 22, section 2142, subsection 3, or a hospice program or hospice provider, as defined in Title 22, section 8621, subsection 10, may: [1997, c. 109, §1 (NEW).]

1. **Possession.** Possess, in the course of employment, such noncontrolled prescription drugs as are approved by the board. In adopting the rules the board shall consult with the Board of Licensure in Medicine, the Board of Osteopathic Licensure, the State Board of Nursing, the Maine Hospice Council, the Department of Health and Human Services and the Home Care Alliance of Maine. Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter II-A; and

[1997, c. 109, §1 (NEW); 2003, c. 689, Pt. B, §6 (REV) .]

2. **Administration.** Administer, in the course of employment, such drugs as are approved under subsection 1 according to written protocols approved annually by the employer's professional advisory committee, which must include a physician licensed under chapter 36 or chapter 48.

[1997, c. 109, §1 (NEW) .]

SECTION HISTORY
1997, c. 109, §1 (NEW). 2003, c. 689, §B6 (REV).

§13811. DRUG ADMINISTRATION BY CERTIFIED MIDWIVES UNDER CERTAIN CONDITIONS

A midwife who can verify to a licensed pharmacist by certification card that the midwife has met the certification standards of an international certification agency whose mission is to establish and administer certification for the credential of certified professional midwife or other certifying body recognized by the board may: [2007, c. 669, §1 (NEW).]

1. **Possession.** Possess, in the course of the practice of midwifery, only the noncontrolled prescription drugs and substances set out in this subsection:

A. Oxygen; [2007, c. 669, §1 (NEW).]

B. Oxytocin, excluding the oxytocic drug methergine, for the sole purpose of postpartum control of maternal hemorrhage; [2007, c. 669, §1 (NEW).]

C. Vitamin K; [2007, c. 669, §1 (NEW).]

D. Eye prophylaxis; and [2007, c. 669, §1 (NEW).]

E. Local anesthetics or numbing agents for repair of lacerations; and [2007, c. 669, §1 (NEW).]

[2007, c. 669, §1 (NEW) .]

2. **Administration.** Administer, in the course of the practice of midwifery, those drugs that are listed in subsection 1. When administering oxytocin, a certified midwife may not administer more than 20 units of oxytocin to a single patient. Oxytocin may be administered only for postpartum purposes in order to treat hemorrhaging and specifically may not be used to induce labor. When a certified midwife administers

oxytocin in accordance with this subsection, the certified midwife shall report that use to the maternal and child health division of the Department of Health and Human Services, the Maine Center for Disease Control and Prevention within 7 days of the use of oxytocin.

[2007, c. 669, §1 (NEW) .]

SECTION HISTORY
2007, c. 669, §1 (NEW).

§13812. DISPENSING OF MEDICATION BY PHARMACIST

1. **Dispensing of medication.** A pharmacist, who in good faith relies upon a certification card presented by a midwife identifying that the midwife has met the certification standards described under section 13811, may sell and dispense to the midwife the noncontrolled prescription drugs and substances identified in section 13811.

[2007, c. 669, §2 (NEW) .]

2. **Good faith.** A pharmacist, or person acting at the direction of a pharmacist, who:

A. In good faith sells and dispenses noncontrolled prescription drugs and substances to a midwife pursuant to this section is not liable for any adverse reactions caused by any method of use by the midwife; and [2007, c. 669, §2 (NEW).]

B. Makes a report relating to the dispensing of noncontrolled prescription drugs and substances to a midwife pursuant to section 13811 to an enforcement agency is immune from any civil liability that may result from that action, including, but not limited to, any civil liability that might otherwise arise under state or local laws or rules regarding confidentiality of information. [2007, c. 669, §2 (NEW).]

In a proceeding in which a pharmacist, or person acting at the direction of a pharmacist, invokes the immunity provided pursuant to this section, there is a rebuttable presumption of good faith.

[2007, c. 669, §2 (NEW) .]

SECTION HISTORY
2007, c. 669, §2 (NEW).

Subchapter 12: COLLABORATIVE PRACTICE FOR EMERGENCY CONTRACEPTION HEADING: PL 2003, C. 524, §1 (NEW)

§13821. SHORT TITLE

This subchapter is known and may be cited as "the Collaborative Practice for Emergency Contraception Act." [2003, c. 524, §1 (NEW).]

SECTION HISTORY
2003, c. 524, §1 (NEW).

§13822. COLLABORATIVE PRACTICE AUTHORIZED

Notwithstanding any other provision of law, a licensed pharmacist who has completed the training required in section 13823 may initiate emergency contraception drug therapy in accordance with standardized procedures or protocols developed by the pharmacist and an authorized prescriber who is acting within the prescriber's scope of practice. [2003, c. 524, §1 (NEW).]

SECTION HISTORY
2003, c. 524, §1 (NEW).

§13823. TRAINING REQUIRED

Prior to performing any procedure authorized under this chapter, a pharmacist must have completed a training program on emergency contraception, delivered by an entity authorized by a national council on pharmaceutical education, or another training program approved by the board. The training program must include, but is not limited to, conduct of sensitive communications, quality assurance, referral to additional services and documentation. [2003, c. 524, §1 (NEW).]

SECTION HISTORY
2003, c. 524, §1 (NEW).

§13824. PROVISION OF STANDARDIZED FACT SHEET REQUIRED

For each emergency contraception drug therapy initiated pursuant to this subchapter, the pharmacist shall provide the recipient of the emergency contraceptive drugs with a standardized fact sheet developed by the board that includes, but is not limited to, the indications for use of the drug, the appropriate method for using the drug, the need for medical follow-up and referral information, information on sexual assault and referral information and other appropriate information. [2003, c. 524, §1 (NEW).]

SECTION HISTORY
2003, c. 524, §1 (NEW).

§13825. CONFIDENTIALITY

Nothing in this subchapter affects the provisions of law relating to maintaining the confidentiality of medical records. [2003, c. 524, §1 (NEW).]

SECTION HISTORY
2003, c. 524, §1 (NEW).

Subchapter 13: ADMINISTRATION OF DRUGS AND VACCINES

§13831. AUTHORITY

1. **Administration of influenza vaccines.** A pharmacist licensed in this State who meets the qualifications and requirements of section 13832 and rules adopted by the board may administer topically or by injection or by inhalation all forms of influenza vaccines, including intranasal influenza vaccines, to a person 9 years of age or older without a prescription.

[2009, c. 308, §3 (NEW) .]

2. **Administration of other vaccines.** A pharmacist licensed in this State who meets the qualifications and requirements of section 13832 and rules adopted by the board, in addition to influenza vaccines under subsection 1, may administer vaccines licensed by the United States Food and Drug Administration that are recommended by the United States Centers for Disease Control and Prevention Advisory Committee

on Immunization Practices, or successor organization, for administration to adults to a person 18 years of age or older according to a valid prescription when the person has an existing primary care physician or other existing relationship with a nurse practitioner or an authorized practitioner in this State. A pharmacist may administer vaccines licensed by the United States Food and Drug Administration that are outside the guidelines recommended by the United States Centers for Disease Control and Prevention Advisory Committee on Immunization Practices, or successor organization, to a person 18 years of age or older according to a valid prescription when the person has an existing primary care physician or other existing relationship with a nurse practitioner or an authorized practitioner in this State if the prescription specifically states that the vaccine is medically necessary. When the person does not have an existing relationship with a primary care physician, nurse practitioner or other practitioner in this State, the pharmacist may proceed to administer according to a treatment protocol established by an authorized practitioner or a written standing order from a practitioner authorized under the laws of this State to issue an order, a prescription or a protocol to a person 18 years of age or older for vaccines licensed by the United States Food and Drug Administration that are recommended by the United States Centers for Disease Control and Prevention Advisory Committee on Immunization Practices, or successor organization, for administration to adults.

[2013, c. 6, §1 (AMD) .]

3. **Emergency administration of certain drugs.** A pharmacist may administer epinephrine or diphenhydramine, or both, to a person in an emergency situation resulting from an adverse reaction to a vaccine administered by the pharmacist.

[2011, c. 577, §3 (AMD) .]

4. **Vaccine clinics.** A pharmacist or pharmacy licensed under this chapter may operate a vaccine administration clinic inside, outside or off the pharmacy's premises if the pharmacist or pharmacy obtains approval from the board for the plan of operation of such clinics pursuant to rules adopted under section 13835, subsection 1.

[2011, c. 577, §4 (NEW) .]

SECTION HISTORY
2009, c. 308, §3 (NEW). 2011, c. 577, §§3, 4 (AMD). 2013, c. 6, §1 (AMD).

§13832. QUALIFICATIONS; REQUIREMENTS

In order to administer a drug or vaccine under this subchapter, a pharmacist must: [2011, c. 577, §5 (AMD).]

1. **Certificate; application and fee.** Possess a current certificate of administration issued by the board pursuant to this subchapter. The pharmacist must submit an application in the form prescribed by the board together with the requirements set forth under this subchapter and certificate fee as set forth under section 13724. The certificate of administration expires and is subject to the conditions in the same manner as stated in section 13734;

[2009, c. 308, §3 (NEW) .]

2. **License.** Hold a valid unrestricted pharmacist license in this State;

[2009, c. 308, §3 (NEW) .]

3. **Training.** Submit evidence acceptable to the board that the pharmacist, within the 3 years immediately preceding application for a certificate of administration:

A. Has completed a 20-hour course of study in the areas of drug administration authorized under this subchapter and as described in subsection 4; [2009, c. 308, §3 (NEW).]

B. Has graduated with a Doctor of Pharmacy degree from a college of pharmacy accredited by the American Council on Pharmaceutical Education that includes completion of training in the areas of drug administration authorized under this subchapter satisfactory to the board, including instruction in the areas identified in subsection 4 received as part of the pharmacist's pharmacy degree program; or [2009, c. 308, §3 (NEW).]

C. Possesses a current certificate of administration issued by another jurisdiction that authorizes the pharmacist to administer drugs comparable to those authorized under this chapter and that is based on the pharmacist's completion of training or course work as described in subsection 4, or its equivalent as determined by the board, and has continuous administration practice since the pharmacist received such training or since completion of a retraining program as required in this subchapter, as long as such retraining incorporates the areas identified in subsection 4; [2009, c. 308, §3 (NEW).]

[2009, c. 308, §3 (NEW) .]

4. **Didactic; practical course.** Satisfactorily complete a didactic and practical course approved by the board that includes the current guidelines and recommendations of the federal Department of Health and Human Services, Centers for Disease Control and Prevention, the American Council on Pharmaceutical Education or a similar health authority or professional body, and that includes, but is not limited to, disease epidemiology, indications for use of vaccines, vaccine characteristics, injection techniques, adverse reactions to vaccines, emergency response to adverse events, immunization screening, informed consent, record keeping, registries, including the immunization information system established under Title 22, section 1064, registry training and reporting mechanisms, including reporting adverse events, life support training, biohazard waste disposal and sterile techniques and related topics; and

[2009, c. 308, §3 (NEW) .]

5. **Life support training.** Submit evidence of completing cardiovascular life support training accepted by the American Heart Association, the American Red Cross or other similar training organization.

[2009, c. 308, §3 (NEW) .]

SECTION HISTORY
2009, c. 308, §3 (NEW). 2011, c. 577, §5 (AMD).

§13833. TREATMENT PROTOCOL

The pharmacist shall administer drugs and vaccines in compliance with a treatment protocol established by a practitioner authorized under the laws of this State to order administration of those drugs and vaccines approved by the board. A copy of the treatment protocol must be submitted to the board. At a minimum the treatment protocol must include: [2011, c. 577, §6 (AMD).]

1. **Standards.** Standards for observation of the person receiving the drug or vaccine to determine whether the person has an adverse reaction, as adopted in rules by the board;

[2011, c. 577, §6 (AMD) .]

2. **Procedures.** Procedures to be followed by the pharmacist when administering epinephrine or diphenhydramine, or both, to a person who has an adverse reaction to a vaccine administered by the pharmacist; and

[2011, c. 577, §6 (AMD) .]

3. **Notification.** Notification to the authorized practitioner who issued the prescription, standing order or protocol under section 13831, subsection 2 of the administration by the pharmacist of the drug or vaccine, or both, within 3 business days.

[2011, c. 577, §6 (AMD) .]

SECTION HISTORY
2009, c. 308, §3 (NEW). 2011, c. 577, §6 (AMD).

§13834. PROHIBITED ACTS

1. **Delegate authority.** A pharmacist may not delegate the pharmacist's authority to administer drugs or vaccines; except that a pharmacist licensed under this chapter who has obtained a certificate of administration pursuant to section 13832 may delegate the authority to administer drugs and vaccines to a pharmacy intern who is under that pharmacist's direct supervision and who has obtained drug administration training pursuant to section 13832, subsection 3. A pharmacy intern may administer drugs and vaccines only to a person 18 years of age or older.

[2013, c. 98, §1 (AMD) .]

2. **Administer drugs.** A pharmacist may not engage in the administration of drugs or vaccines unless the pharmacist meets the qualifications and requirements of section 13832 and the pharmacist has obtained a board-issued certificate of administration.

[2011, c. 577, §7 (AMD) .]

SECTION HISTORY
2009, c. 308, §3 (NEW). 2011, c. 577, §7 (AMD). 2013, c. 98, §1 (AMD).

§13835. RULES

The board, after consultation with the Maine Center for Disease Control and Prevention and the Board of Licensure in Medicine, shall adopt rules to implement this subchapter. The rules must include, at a minimum: [2009, c. 308, §3 (NEW).]

1. **Criteria.** Criteria for the operation of a vaccine administration clinic inside, outside or off the premises of a retail pharmacy, rural health clinic or free clinic licensed under section 13751. The rules must require one-time board approval of the plan of operation for any vaccine administration clinics to be operated by a pharmacist or pharmacy and may not require board approval of each individual clinic;

[2011, c. 577, §8 (AMD) .]

2. **Record keeping.** Record keeping and documentation procedures and reporting requirements, giving preference to electronic means when available; and

[2009, c. 308, §3 (NEW) .]

3. **Recipient assessment.** Recipient assessment, consent and rights.

[2009, c. 308, §3 (NEW) .]

Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2009, c. 308, §3 (NEW).]

SECTION HISTORY

2009, c. 308, §3 (NEW). 2011, c. 577, §8 (AMD).

Subchapter 14: COLLABORATIVE DRUG THERAPY MANAGEMENT

§13841. AUTHORITY

1. **Engage in collaborative drug therapy management.** A pharmacist licensed in this State who meets the qualifications and requirements of section 13842 and rules adopted by the board may engage in collaborative drug therapy management pursuant to a collaborative practice agreement with a practitioner.

[2013, c. 308, §4 (NEW) .]

2. **Scope of authority.** A pharmacist engaging in collaborative drug therapy management pursuant to subsection 1 is entitled to adequate access to a patient's history, disease status, drug therapy and laboratory and procedure results and may:

A. Collect and review a patient's history; [2013, c. 308, §4 (NEW).]

B. Obtain and check vital signs; [2013, c. 308, §4 (NEW).]

C. Order and evaluate the results of laboratory tests directly related to drug therapy under the supervision of, or in direct consultation with, a practitioner and in accordance with approved protocols applicable to the practice setting and when the evaluation does not include a diagnostic component; and [2013, c. 308, §4 (NEW).]

D. Initiate, monitor, modify and discontinue drug therapy for a particular patient pursuant to the collaborative practice agreement with a practitioner who is treating the patient, as long as the action is reported to the practitioner in a timely manner as determined by rules adopted pursuant to section 13846. [2013, c. 308, §4 (NEW).]

[2013, c. 308, §4 (NEW) .]

SECTION HISTORY
2013, c. 308, §4 (NEW).

§13842. QUALIFICATIONS

In order to enter into a collaborative practice agreement with a practitioner under this subchapter, a pharmacist must: [2013, c. 308, §4 (NEW).]

1. **License.** Hold a valid unrestricted pharmacist license in this State;

[2013, c. 308, §4 (NEW) .]

2. **Training.** Submit evidence acceptable to the board that the pharmacist:

A. Possesses certification from the Board of Pharmacy Specialties or successor organization or has completed an accredited residency program. If the residency program is not in the area of practice covered by the agreement, the pharmacist must complete a continuing education certificate program of at least 15 hours of continuing education in each clinical area of practice covered by the agreement; [2013, c. 308, §4 (NEW).]

B. Has graduated with a Doctor of Pharmacy degree from a college of pharmacy accredited by the American Council on Pharmaceutical Education, has 2 years of professional experience and has completed a continuing education certificate program of at least 15 hours of continuing education in each clinical area of practice covered by the agreement; or [2013, c. 308, §4 (NEW).]

C. Has graduated with a Bachelor of Science in Pharmacy degree from a college of pharmacy accredited by the American Council on Pharmaceutical Education, has 3 years of professional experience and has completed a continuing education certificate program of at least 15 hours of continuing education in each clinical area of practice covered by the agreement. [2013, c. 308, §4 (NEW).]

[2013, c. 308, §4 (NEW) .]

SECTION HISTORY
2013, c. 308, §4 (NEW).

§13843. COLLABORATIVE PRACTICE AGREEMENT

A pharmacist may engage in collaborative drug therapy management pursuant to a collaborative practice agreement in accordance with this section. [2013, c. 308, §4 (NEW).]

1. **Submit to board.** The pharmacist shall submit a copy of the collaborative practice agreement to the board and the licensing board that licenses the practitioner prior to the commencement of the collaborative practice.

[2013, c. 308, §4 (NEW) .]

2. **Review and revision.** The signatories to a collaborative practice agreement shall establish a procedure for reviewing and, if necessary, revising the procedures and protocols of the collaborative practice agreement.

[2013, c. 308, §4 (NEW) .]

3. **Health information privacy.** Services provided pursuant to a collaborative practice agreement must be performed in compliance with the federal Health Insurance Portability and Accountability Act of 1996, 42 United States Code, Section 1320d et seq. and its regulations, 45 Code of Federal Regulations, Parts 160-164.

[2013, c. 308, §4 (NEW) .]

4. **Amendments to agreement.** Amendments to a collaborative practice agreement must be documented, signed and dated.

[2013, c. 308, §4 (NEW) .]

5. **Assessment; risk management.** A collaborative practice agreement must include a plan for measuring and assessing patient outcomes and must include proof that liability insurance is maintained by all parties to the agreement.

[2013, c. 308, §4 (NEW) .]

6. **Contents of agreement.** A practitioner and a pharmacist desiring to engage in collaborative practice in accordance with this subchapter shall execute a collaborative practice agreement that must contain, but is not limited to:

A. A provision that states that activity in the initial 3 months of a collaborative practice agreement is limited to monitoring drug therapy. After the initial 3 months, the practitioner and pharmacist shall meet to review the collaborative practice agreement and determine the scope of the agreement, which may after the initial 3 months include a pharmacist's initiating, monitoring, modifying and discontinuing a patient's drug therapy and reporting these actions to the practitioner in a timely manner in accordance with rules adopted pursuant to section 13846; [2013, c. 308, §4 (NEW).]

B. Identification and signatures of the parties to the collaborative practice agreement, the dates the agreement is signed and the beginning and ending dates of the period of time during which the agreement is in effect; [2013, c. 308, §4 (NEW).]

C. A provision that allows either party to cancel the collaborative practice agreement by written notification; [2013, c. 308, §4 (NEW).]

D. Specification of the site and setting at which the collaborative practice will occur; [2013, c. 308, §4 (NEW).]

E. Specification of the qualifications of the participants in the collaborative practice agreement; [2013, c. 308, §4 (NEW).]

F. A detailed description of the types of diseases, drugs or drug categories involved and collaborative drug therapy management allowed in each patient's case; and [2013, c. 308, §4 (NEW).]

G. A procedure for the referral of each patient to the practitioner. [2013, c. 308, §4 (NEW).]

[2013, c. 308, §4 (NEW) .]

SECTION HISTORY
2013, c. 308, §4 (NEW).

§13844. CONDITIONS OR DISEASES MANAGED; SCOPE OF PRACTICE

1. **Generally accepted standards of care.** A pharmacist may engage in collaborative drug therapy management pursuant to a collaborative practice agreement only for conditions or diseases with generally accepted standards of care.

[2013, c. 308, §4 (NEW) .]

2. **Prohibition.** A pharmacist who is engaged in collaborative drug therapy management pursuant to a collaborative practice agreement may not, as part of the collaborative practice, participate in research or clinical or investigational trials.

[2013, c. 308, §4 (NEW) .]

3. **Limitation.** A collaborative practice agreement may include only the conditions or diseases to be managed that meet the qualifications and scope of practice for each party to the agreement.

[2013, c. 308, §4 (NEW) .]

SECTION HISTORY
2013, c. 308, §4 (NEW).

§13845. PRACTICE PROTOCOLS

A pharmacist may engage in collaborative drug therapy management in compliance with a treatment protocol established by the practitioner with whom the pharmacist has a collaborative practice agreement. A copy of the treatment protocol must be submitted to the board. At a minimum, the treatment protocol must include a statement by the practitioner that describes the activities in which the pharmacist is authorized to engage and a provision that allows the practitioner, when appropriate, to override a collaborative practice decision made by the pharmacist. [2013, c. 308, §4 (NEW).]

SECTION HISTORY
2013, c. 308, §4 (NEW).

§13846. RULES

The board and the Board of Licensure in Medicine, after consultation with the Department of Health and Human Services, shall adopt rules to implement this subchapter. The rules must include rules establishing record-keeping and documentation procedures and reporting requirements and must allow for electronic filing when possible. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2013, c. 308, §4 (NEW).]

SECTION HISTORY
2013, c. 308, §4 (NEW).

§13847. EXEMPTIONS

Nothing in this subchapter may be construed to limit the scope of practice of a pharmacist pursuant to this chapter or to apply to collaborative practice agreements entered into between a pharmacist and a hospital solely for the treatment of inpatients at the hospital. [2013, c. 308, §4 (NEW).]

SECTION HISTORY
2013, c. 308, §4 (NEW).

Chapter 119: COUNSELING PROFESSIONALS

§13851. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1989, c. 465, §3 (NEW).]

1. **Board.**

[1991, c. 263, §6 (AFF); 1991, c. 263, §5 (RP) .]

1-A. **Board.** "Board" means the Board of Counseling Professionals Licensure, established in section 13852.

[2007, c. 402, Pt. EE, §1 (NEW) .]

2. **Clinical professional counselor.** "Clinical professional counselor" means a professional counselor who renders or offers to render for a fee, monetary or otherwise, to individuals, families, groups, organizations or the general public, a counseling service involving the application of the principles and procedures of counseling to assess and treat intrapersonal and interpersonal problems and other dysfunctional behaviors and to assist in the overall development and adjustment of those served.

[1989, c. 465, §3 (NEW) .]

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

[1989, c. 465, §3 (NEW) .]

4. **Conditional license.** "Conditional license" means a license granted to an applicant for licensure who has met all the requirements defined in section 13858, except for supervised experience.

[1989, c. 465, §3 (NEW); 1989, c. 895, §2 (AMD) .]

4-A. **Counselor.** "Counselor" means an individual who for a fee, monetary or otherwise, engages in any of the procedures of counseling defined in subsection 8.

[1989, c. 895, §3 (NEW) .]

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

[1989, c. 465, §3 (NEW) .]

6. **Marital and family therapy services.** "Marital and family therapy services" means the assessment and treatment of intrapersonal and interpersonal problems through the application of principles, methods and therapeutic techniques for the purpose of resolving emotional conflicts, modifying perceptions and behavior, enhancing communication and understanding among all family members, and preventing family and individual crises.

[1989, c. 465, §3 (NEW) .]

7. **Marriage and family therapist.** "Marriage and family therapist" means a person who renders or offers to render for a fee, monetary or otherwise, marital and family therapy services.

[1989, c. 465, §3 (NEW) .]

7-A. **Pastoral counselor.** "Pastoral counselor" means an individual who is trained and certified to provide for a fee, monetary or otherwise, pastoral counseling, which is ministry to individuals, families, couples, groups, organizations and the general public involving the application of principles and procedures of counseling to assess and treat intrapersonal and interpersonal problems and other dysfunctional behavior of a social and spiritual nature, and to assist in the overall development and healing process of those served.

[1989, c. 895, §3 (NEW) .]

8. **Procedures of counseling.** "Procedures of counseling" means methods and techniques that include, but are not limited to, the following.

A. "Assessment" means selecting, administering and interpreting instruments designed to assess personal, interpersonal and group characteristics. [1989, c. 465, §3 (NEW).]

B. "Consulting" means the application of scientific principles and procedures in counseling to provide assistance in understanding and solving a current or potential problem that the client may have in relation to a 3rd party, be it an individual, a family, a group or an organization. [1989, c. 465, §3 (NEW).]

C. "Counseling" means assisting individuals, families or groups through the counseling relationship to develop understanding of intrapersonal and interpersonal problems, to define goals, to make decisions, to plan a course of action reflecting their needs, and to use information and community resources, as these procedures are related to personal, social, educational and vocational development. [1989, c. 465, §3 (NEW).]

D. "Referral" means the evaluation of information to identify needs or problems of the counselee and to determine the advisability of referral to other specialists, informing the counselee of that judgment, and communicating as requested or deemed appropriate with referral sources. [1989, c. 465, §3 (NEW).]

[1989, c. 465, §3 (NEW) .]

9. **Professional counselor.** "Professional counselor" means a person who, for a fee, monetary or otherwise, renders or offers to render to individuals, families, groups, organizations or the general public a service involving the application of principles and procedures of counseling to assist those served in achieving more effective personal, emotional, social, educational and vocational development and adjustment.

[1989, c. 465, §3 (NEW) .]

SECTION HISTORY
1989, c. 465, §3 (NEW). 1989, c. 549, §§1,3 (NEW). 1989, c. 878, §A101 (RP). 1989, c. 895, §§2,3 (AMD). 1989, c. 895, §§1,22 (AFF). 1991, c. 263, §§5,6 (AFF). 2007, c. 402, Pt. EE, §1 (AMD).

§13852. BOARD OF COUNSELING PROFESSIONALS LICENSURE; ESTABLISHMENT; COMPENSATION

1. **Establishment.** The Board of Counseling Professionals Licensure within the department as established by Title 5, section 12004-A, subsection 9-C, shall carry out the purposes of this chapter.

[2007, c. 402, Pt. EE, §2 (AMD) .]

2. **Members.** The board consists of 8 members, 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, 4 of whom must be clinical professional counselors, one of whom must be a marriage and family therapist and one of whom 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. One member must be a public member as defined in Title 5, section 12004-A and may not be currently practicing counseling or receiving compensation for 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.

[2007, c. 621, §14 (AMD) .]

3. **Officers.**

[2007, c. 402, Pt. EE, §2 (RP) .]

4. **Terms of office.** Appointments are for terms of 3 years each. Appointments of members must comply with Title 10, section 8009.

[2007, c. 402, Pt. EE, §2 (AMD) .]

5. **Removal.** The Governor may remove any member of the board for cause and the reason for the termination of each appointment must be communicated to each member so terminated. The appointment of any member of the board must be terminated if a member is absent for 6 consecutive board meetings without good and just cause that is communicated to the chair.

[1989, c. 465, §3 (NEW); 1989, c. 895, §4 (AMD) .]

6. **Compensation.**

[1995, c. 397, §113 (RP) .]

7. **Meetings; chair.** 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.

[2013, c. 246, Pt. B, §25 (AMD) .]

SECTION HISTORY
1989, c. 465, §3 (NEW). 1989, c. 549, §§1,3 (NEW). 1989, c. 878, §A101 (RP). 1989, c. 895, §§4,21 (AMD). 1989, c. 895, §§1,22 (AFF). 1991, c. 263, §2 (AMD). 1991, c. 263, §§5,6 (AFF). 1993, c. 600, §A273 (AMD). 1995, c. 397, §113 (AMD). 1999, c. 687, §§E10-13 (AMD). 1999, c. 790, §B4 (AMD). 2007, c. 402, Pt. EE, §2 (AMD). 2007, c. 621, §§14, 15 (AMD). 2009, c. 112, Pt. A, §19 (AMD). 2013, c. 246, Pt. B, §25 (AMD).

§13853. POWERS AND DUTIES OF THE BOARD

The board has the following powers and duties in addition to all other powers and duties otherwise set forth in this chapter. [2007, c. 402, Pt. EE, §3 (AMD).]

1. **Standards.** The board shall administer and enforce this chapter, set forth education and examination standards and evaluate the qualifications for licensure.

[1989, c. 465, §3 (NEW) .]

2. **Rules.** The board may adopt, in accordance with Title 5, chapter 375, rules necessary to carry out the purposes of this chapter.

[2007, c. 402, Pt. EE, §3 (AMD) .]

3. **Complaints.**

[2007, c. 402, Pt. EE, §3 (RP) .]

4. **Records.**

[2007, c. 402, Pt. EE, §3 (RP) .]

5. **Reports.**

[2007, c. 402, Pt. EE, §3 (RP) .]

6. **Contracts.**

[1995, c. 397, §114 (RP) .]

7. **Budget.**

[1995, c. 397, §114 (RP) .]

8. **Register.**

[2007, c. 402, Pt. EE, §3 (RP) .]

9. **Employees.**

[1995, c. 397, §114 (RP) .]

10. **Officers.** The board shall elect from among its members officers as it determines necessary.

[2007, c. 402, Pt. EE, §3 (AMD) .]

11. **Code of ethics.** The board shall adopt a code of ethics generally in keeping with standards established by the national professional associations concerned with the areas of board responsibility.

[1989, c. 465, §3 (NEW) .]

12. **Hearings.**

[2007, c. 402, Pt. EE, §3 (RP) .]

13. **Disclosure statements.** Under this chapter all licensees and registrants are required to provide disclosure statements to clients prior to treatments. The board may adopt, by rule, a standard disclosure statement. This disclosure statement must include, but not be limited to, the name and address of the licensee or registrant, the original date and the expiration date of the license, the proposed course of treatment and financial arrangements for clients.

[2007, c. 402, Pt. EE, §3 (AMD) .]

14. **Issue licenses.** The board shall issue licenses as necessary to implement this chapter.

[1989, c. 895, §6 (NEW); 1989, c. 895, §22 (AFF) .]

15. **Client bill of rights.** The board shall specify the information that counselors are to include in a client bill of rights that is to be provided to all clients by all counselors.

[1989, c. 895, §6 (NEW) .]

SECTION HISTORY
1989, c. 465, §3 (NEW). 1989, c. 549, §§1,3 (NEW). 1989, c. 878, §A101 (RP). 1989, c. 895, §§5,6,22 (AMD). 1989, c. 895, §§1,22 (AFF). 1991, c. 263, §§5,6 (AFF). 1995, c. 397, §114 (AMD). 2007, c. 402, Pt. EE, §3 (AMD).

§13854. LICENSING

1. **Licensing.** Effective October 1, 1992, a person may not, unless specifically exempted by this chapter, profess to be a clinical professional counselor, professional counselor, marriage and family therapist, licensed pastoral counselor or conditional license holder unless licensed in accordance with this chapter.

[2001, c. 421, Pt. B, §102 (AMD); 2001, c. 421, Pt. C, §1 (AFF) .]

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

[1989, c. 465, §3 (NEW) .]

3. **Unlicensed practice.** A person who violates subsection 1 is subject to the provisions of Title 10, section 8003-C.

[2007, c. 402, Pt. EE, §4 (AMD) .]

SECTION HISTORY
1989, c. 465, §3 (NEW). 1989, c. 895, §7 (AMD). 1989, c. 895, §§1,22 (AFF). 1991, c. 263, §§5,6 (AFF). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2001, c. 421, §B103 (AMD). 2001, c. 421, §§B102,103 (AMD). 2001, c. 421, §C1 (AFF). 2007, c. 402, Pt. EE, §4 (AMD).

§13855. PSYCHOLOGICAL TESTING; ASSESSMENT SERVICES

Nothing in this chapter may be construed as permitting clinical professional counselors, professional counselors, marriage and family therapists, pastoral counselors or conditional license holders to hold themselves out to the public as psychologists or psychological examiners as defined in section 3811, subsection 1, or to offer primarily or solely the services of psychological testing. The board shall adopt ethical standards relating to the utilization of assessment techniques. [1989, c. 465, §3 (NEW); 1989, c. 895, §8 (AMD).]

SECTION HISTORY
1989, c. 465, §3 (NEW). 1989, c. 895, §8 (AMD). 1989, c. 895, §§1,22 (AFF). 1991, c. 263, §§5,6 (AFF).

§13856. EXEMPTIONS TO LICENSURE

1. **Other professionals.** Nothing in this chapter may be construed to apply to the activities and services of members of other professions licensed, certified or registered by the State such as, but not limited to, psychiatrists, physicians, psychologists, registered nurses, social workers and substance abuse counselors performing counseling consistent with the laws of the State governing their practices.

[1989, c. 465, §3 (NEW); 1989, c. 895, §9 (AMD) .]

2. **Government and school employees.** Nothing in this chapter may be construed to apply to the activities and services of an employee or other agent of a recognized academic institution; employee assistance program; a federal, state, county or local government institution, program, agency or facility; or a school committee, school district, school approved for attendance purposes pursuant to Title 20-A, section 2901, school board or board of trustees, provided that the individual is performing those activities solely within the agency or under the jurisdiction of that agency and provided further that a license granted under this chapter is not a requirement for employment.

[1989, c. 465, §3 (NEW); 1989, c. 895, §9 (AMD) .]

3. **Clergy.** Nothing in this chapter may be construed to apply to the activities and services of any priest, rabbi, clergyman, including a Christian Science healer, or minister of the gospel of any religious denomination when performing counseling services as part of religious duties and in connection with a specific synagogue or church of any religious denomination.

[1989, c. 465, §3 (NEW); 1989, c. 895, §9 (AMD) .]

4. **Interns.** Nothing in this chapter may be construed to apply to the activities and services of a student, intern or trainee in counseling or marriage and family therapy pursuing a course of study in counseling or marriage and family therapy in a regionally accredited institution of higher education or training institution, if these activities are performed under supervision and constitute a part of the supervised course of study.

[1989, c. 465, §3 (NEW) .]

5. **Lecturers; consultants.** Nothing in this chapter may be construed to apply to the activities and services of visiting lecturers or the occasional services of qualified consultants from outside the State, or the use of occasional services of organizations from outside the State employing qualified counselors.

[1989, c. 465, §3 (NEW) .]

6. **Peer groups; self-help groups.** Nothing in this chapter shall be construed to prevent members of peer groups or self-help groups from performing peer counseling solely in the context of the peer groups or self-help groups.

[1989, c. 465, §3 (NEW) .]

7. **Management consultants.** Nothing in this chapter applies to the activities and services of any management consultant when performing services, counseling or otherwise, with clients other than private individuals. Such clients include, but are not limited to, for-profit and nonprofit corporations, partnerships, sole proprietorships, academic institutions and governmental entities.

[1989, c. 895, §10 (NEW) .]

8. **Educational and career consultants.** Nothing in this chapter applies to the counseling activities of educational, vocational or career consultants when performed as an adjunct to their prime function of educational, vocational or career consultation.

[1989, c. 895, §10 (NEW) .]

9. **Human resource and organizational developers.** Nothing in this chapter applies to the counseling activities of human resource developers and organizational developers when this counseling is an adjunct to their prime function.

[1989, c. 895, §10 (NEW) .]

10. **Other exemptions.** Nothing in this chapter applies to the activities and services of individuals who practice as expressive art therapists, energy field workers, astrologers, tarot card readers, psychic diviners, aromatherapists, crystal workers, palm readers or practitioners of similar disciplines as determined by the board.

[1989, c. 895, §10 (NEW) .]

SECTION HISTORY
1989, c. 465, §3 (NEW). 1989, c. 895, §§9,10 (AMD). 1989, c. 895, §§1,22 (AFF). 1991, c. 263, §§5,6 (AFF).

§13857. NONRESIDENTS; APPLICANTS LICENSED IN ANOTHER JURISDICTION

1. **Reciprocal agreements.** The Board of Counseling Professionals Licensure may enter into reciprocal agreements with other jurisdictions that have substantially similar licensure laws and accord substantially equal reciprocal rights to residents licensed in good standing in this State.

[2003, c. 542, §1 (NEW) .]

2. **Applicants licensed in another jurisdiction.** An applicant who is licensed under the laws of another jurisdiction is governed by this subsection.

A. An applicant who is licensed under the laws of a jurisdiction that has a reciprocal agreement with the Board of Counseling Professionals Licensure may obtain a license under the terms and conditions as agreed upon through the reciprocal agreement. [2003, c. 542, §1 (NEW).]

B. An applicant who is licensed in good standing at the time of application to the board under the laws of a jurisdiction that has not entered into a reciprocal agreement with the Board of Counseling Professionals Licensure may qualify for licensure by submitting evidence to the board that the applicant has held a substantially equivalent, valid license for at least 5 consecutive years immediately preceding application to the board at the level of licensure applied for in this State. [2013, c. 217, Pt. G, §1 (AMD).]

C. An applicant who is licensed in good standing at the time of application to the board under the laws of a jurisdiction that has not entered into a reciprocal agreement and who does not meet the requirements of paragraph B may qualify for licensure by submitting evidence satisfactory to the board that the applicant's qualifications for licensure are substantially similar to those requirements in this chapter. [2003, c. 542, §1 (NEW).]

D. [2013, c. 217, Pt. G, §2 (RP); 2013, c. 217, Pt. K, §8 (RP).]

[2013, c. 217, Pt. G, §§1, 2 (AMD); 2013, c. 217, Pt. K, §8 (AMD) .]

SECTION HISTORY
1989, c. 465, §3 (NEW). 1989, c. 895, §11 (AMD). 1989, c. 895, §§1,22 (AFF). 1991, c. 263, §§5,6 (AFF). 2003, c. 542, §1 (RPR). 2011, c. 286, Pt. B, §5 (REV). 2013, c. 217, Pt. G, §§1, 2 (AMD). 2013, c. 217, Pt. K, §8 (AMD).

§13858. REQUIREMENTS FOR LICENSURE

To be eligible for a license to practice counseling at any level, an applicant must be at least 18 years of age and satisfactorily pass any examination as the board may prescribe by its rules. Each applicant must demonstrate trustworthiness and competence to engage in the practice of counseling in such a manner as to safeguard the interests of the public. Each applicant must submit an application and pay the fee as set under section 13859. The license categories "licensed clinical professional counselor," "licensed pastoral counselor" and "licensed marriage and family therapist" are of equivalent clinical status. Clinical status grants the ability to diagnose and treat mental health disorders. [2007, c. 402, Pt. EE, §5 (AMD).]

The following shall be considered as minimum evidence satisfactory to the board that an applicant is qualified for licensure under this chapter. [1989, c. 465, §3 (NEW).]

1. Licensed professional counselor. To be qualified as a licensed professional counselor, an applicant must demonstrate to the satisfaction of the board adherence to the ethics of the counseling profession, successfully complete the examination prescribed by the board and have:

A. A master's degree or a doctoral degree in counseling or an allied mental health field from an accredited institution or a program approved by the board. Such schooling must include a minimum core curriculum and total credit hours as adopted by the board; and [2003, c. 542, §2 (AMD).]

B. Two years of experience after obtainment of a master's degree or a doctoral degree with a minimum of 2,000 hours of supervised experience. [2003, c. 542, §2 (AMD).]

[2003, c. 542, §2 (AMD) .]

2. Licensed clinical professional counselor. To be qualified as a licensed clinical professional counselor, an applicant must demonstrate to the satisfaction of the board adherence to the ethics of the counseling profession, successfully complete the examination prescribed by the board and have:

A. A master's degree or a doctoral degree in counseling or an allied mental health field from an accredited institution or a program approved by the board. Such schooling must include a minimum core curriculum and total credit hours as adopted by the board; [2013, c. 262, §5 (AMD).]

B. Two years of experience after obtainment of a master's degree or a doctoral degree to include at least 3,000 hours of supervised clinical experience with a minimum of 100 hours of personal supervision; and [2013, c. 262, §5 (AMD).]

C. Beginning January 1, 2020, demonstrated to the satisfaction of the board successful completion of a minimum of 12 hours of course work in family or intimate partner violence, including course work in spousal or partner abuse that addresses screening, referral and intervention strategies, including knowledge of community resources, cultural factors, evidence-based risk assessment and same-gender abuse dynamics. An applicant may fulfill this requirement through course work taken in fulfillment of other educational requirements for licensure or through separate course work provided through contact hours, Internet hours or distance learning programs, as evidenced by certification from an accredited educational institution. The board shall accept certification from the accredited educational institution from which the applicant is a graduate that verifies the applicant's satisfaction of this requirement within the applicant's completed course curriculum. An applicant for initial licensure that is unable

to demonstrate completion of the requirements of this paragraph at the time the initial application is submitted shall demonstrate to the board that these requirements have been fulfilled upon the applicant's first application for license renewal. [2013, c. 262, §5 (NEW).]

[2013, c. 262, §5 (AMD) .]

3. **Licensed marriage and family therapist.** To be qualified as a licensed marriage and family therapist, an applicant must demonstrate to the satisfaction of the board adherence to the ethics of the counseling profession, successfully complete the examination prescribed by the board and have:

A. A master's degree or a doctoral degree in marriage and family therapy or its equivalent from an accredited institution or a program approved by the board. Such schooling must include a minimum core curriculum to include a one-year clinical practicum and total credit hours adopted by the board; and [2003, c. 542, §2 (AMD).]

B. Two years of experience after obtainment of a master's degree or a doctoral degree comprised of at least 1,000 hours of direct clinical contact with couples and families and 200 hours of supervision, at least 100 of which must be individual supervision. [2003, c. 542, §2 (AMD).]

Notwithstanding the requirements for conditional licensure in section 13851, subsection 4, the board may grant a temporary conditional license for a period not to exceed 6 months to an applicant who meets the requirements of this subsection except for the successful completion of the examination prescribed by the board. In addition, the applicant must be employed at an agency under clinical supervision and must apply for and successfully complete the examination within this 6-month period. If the applicant fails the examination, the applicant is prohibited from using any clinical experience gained during the 6-month period that the applicant held the temporary conditional license to qualify for licensure.

[2009, c. 172, §1 (AMD) .]

3-A. **Licensed pastoral counselor.** To be qualified as a licensed pastoral counselor, an applicant must have:

A. Demonstrated to the satisfaction of the board adherence to the standard ethics of the pastoral counseling profession; [1989, c. 895, §12 (NEW).]

B. Received a Master of Divinity degree or a Doctor of Divinity degree, or an equivalent degree approved by the board, from an accredited institution or a program approved by the board. Academic preparation includes a minimum graduate core curriculum to include 20 credit hours of counseling and human relations and 400 hours of clinical pastoral education; [2003, c. 542, §3 (AMD).]

C. Two years of experience after attainment of the degree, comprised of at least 1,000 hours of direct clinical contact with individuals, couples and families; [1989, c. 895, §12 (NEW).]

D. Two hundred hours of supervision, including at least 1/3 of those hours with a certified pastoral counseling supervisor, at least 30 hours of which must be interdisciplinary, 30 hours of which must be individual supervision by one supervisor of no more than 3 cases from intake to termination, and 70 hours of which must be individual supervision of multiple case material; [1989, c. 895, §12 (NEW).]

E. A call, appointment or charge by a church, synagogue, religious order or other clearly defined legal religious organization to perform these services as a function of ministry; and [1989, c. 895, §12 (NEW).]

F. Completed successfully the examination prescribed by the board pursuant to subsection 5. [1989, c. 895, §12 (NEW).]

[2003, c. 542, §3 (AMD) .]

4. **Supervision.** Supervision may be provided by a qualified and duly certified or licensed counseling professional, clinical social worker, psychologist or psychiatrist. Any other supervisor must be individually approved by the board.

[1989, c. 465, §3 (NEW) .]

5. **Examination.** All applicants are required to pass a written examination in subjects the board deems necessary to determine the fitness of the applicant to practice. The board shall establish the passing score for all examinations. Examinations must be held at least twice a year. The examination must be graded using established written base line scores for failure or passage, be based on accepted counseling criteria and include measurable and clearly defined procedures for grading the results and issuing a pass or fail decision. Decisions on all examinations must be in writing and include a grade and, whenever possible, a summary of the criteria for the grade and an explanation of the procedure for reexamination or appeal.

[1989, c. 465, §3 (NEW); 1989, c. 895, §13 (AMD) .]

6. **Existing counselors.**

[1995, c. 259, §1 (RP) .]

7. **License not allowed.** Notwithstanding subsections 1 to 5, an individual whose license, certification or registration has been revoked or suspended in this or any other state and in this or any other related field, may not be licensed under this section, unless the period of revocation or suspension has been completed and the board has conducted a competency review and determined that an acceptable degree of rehabilitation has been accomplished.

[1995, c. 259, §2 (AMD) .]

8. **Rulemaking.** The board shall adopt rules to implement the provisions of subsections 1, 2 and 3 and subsection 3-A, paragraph B. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

[2003, c. 542, §4 (NEW) .]

SECTION HISTORY
1989, c. 465, §3 (NEW). 1989, c. 895, §§12-14 (AMD). 1989, c. 895, §§1,22 (AFF). 1991, c. 263, §§3,4 (AMD). 1991, c. 263, §§5,6 (AFF). 1995, c. 259, §§1,2 (AMD). 1999, c. 386, §T2 (AMD). 2003, c. 542, §§2-4 (AMD). 2007, c. 402, Pt. EE, §5 (AMD). 2009, c. 172, §1 (AMD). 2013, c. 262, §5 (AMD).

§13859. FEES

The Director of the Office of Professional and Occupational Regulation within the department may establish by rule fees for purposes authorized under this chapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for any one purpose may not exceed $300. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.
[2007, c. 402, Pt. EE, §6 (NEW); 2011, c. 286, Pt. B, §5 (REV).]

SECTION HISTORY
1989, c. 465, §3 (NEW). 1989, c. 895, §15 (AMD). 1989, c. 895, §§1,22 (AFF). 1991, c. 263, §§5,6 (AFF). 2007, c. 402, Pt. EE, §6 (RPR). 2011, c. 286, Pt. B, §5 (REV).

§13860. TERMS OF LICENSES

1. **Biennial renewal.** Licenses expire biennially on December 31st or on such other date as the commissioner may determine.

Licenses may be renewed up to 90 days after the date of expiration upon payment of a late fee in addition to the renewal fee as set under section 13859. Any person who submits an application for renewal more than 90 days after the license renewal date is subject to all requirements governing new applicants under this chapter, except that the board may, giving due consideration to the protection of the public, waive examination if that renewal examination is received, together with the late fee and renewal fee, within 2 years from the date of that expiration.

[2007, c. 402, Pt. EE, §7 (AMD) .]

2. **Continuing education and supervision.** The board, by rule, may establish continuing education and supervision requirements. Applicants for license renewal must show proof of satisfying the continuing education requirements set forth by the board. If a license lapses due to failure of the licensee to meet continuing education requirements, the licensee may renew the license upon completion of the required continuing education. Beginning January 1, 2020, applicants for license renewal shall demonstrate to the satisfaction of the board a one-time successful completion of a minimum of 12 hours of course work in family or intimate partner violence, including course work in spousal or partner abuse that addresses screening, referral and intervention strategies, including knowledge of community resources, cultural factors, evidence-based risk assessment and same-gender abuse dynamics. An applicant may fulfill this requirement through course work provided through contact hours, Internet hours or distance learning programs, as evidenced by certification from an accredited educational institution or equivalent teaching or practice experience. The board may accept equivalent courses in family or intimate partner violence screening and referral and intervention strategies or equivalent teaching or practice experience completed prior to January 1, 2020 in satisfaction of this requirement. Continuing education courses taken pursuant to this subsection must be applied to the licensee's required hours of continuing education.

[2013, c. 262, §6 (AMD) .]

SECTION HISTORY
1989, c. 465, §3 (NEW). 1989, c. 895, §16 (AMD). 1989, c. 895, §§1,22 (AFF). 1991, c. 263, §§5,6 (AFF). 1997, c. 128, §1 (AMD). 2007, c. 402, Pt. EE, §7 (AMD). 2013, c. 262, §6 (AMD).

§13861. DISCIPLINARY ACTION GROUNDS; PROCEDURE; COMPLAINTS *(REPEALED)*

SECTION HISTORY
1989, c. 465, §3 (NEW). 1989, c. 895, §17 (AMD). 1989, c. 895, §§1,22 (AFF). 1991, c. 263, §§5,6 (AFF). 1993, c. 600, §A274 (AMD). 2007, c. 402, Pt. EE, §8 (RP).

§13861-A. DENIAL OR REFUSAL TO RENEW LICENSE; DISCIPLINARY ACTION; REINSTATEMENT

1. **Disciplinary action.** In addition to the grounds enumerated in Title 10, section 8003, subsection 5-A, paragraph A, the board may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A for:

A. Habitual substance abuse or abuse of other drugs listed as controlled substances by the federal Drug Enforcement Administration that has resulted or is foreseeably likely to result in the applicant's or licensee's performing services in a manner that endangers the health or safety of patients; [2007, c. 402, Pt. EE, §9 (NEW).]

B. A medical finding of mental incompetency; and [2007, c. 402, Pt. EE, §9 (NEW).]

C. Having had any professional or occupational license revoked for disciplinary reasons or any application rejected for reasons relating to untrustworthiness, within 3 years of the date of application. [2007, c. 402, Pt. EE, §9 (NEW).]

[2007, c. 402, Pt. EE, §9 (NEW) .]

2. Reinstatement.

[2007, c. 621, §16 (RP) .]

SECTION HISTORY
2007, c. 402, Pt. EE, §9 (NEW). 2007, c. 621, §16 (AMD).

§13862. PRIVILEGED COMMUNICATION

Except at the request or consent of the client, no person licensed under this chapter may be required to testify in any civil or criminal action, suit or proceeding at law or in equity respecting any information that the person licensed or registered may have acquired in providing counseling services or marriage and family therapy services to the client in a professional and contractual capacity if that information was necessary to enable the licensee to furnish professional counseling services to the client. When the physical or mental condition of the client is an issue in that action, suit or proceeding or when a court in the exercise of sound discretion determines the disclosure necessary to the proper administration of justice, information communicated to or otherwise learned by that licensed or registered person in connection with the provision of counseling or marriage and family therapy services may not be privileged and disclosure may be required. [1989, c. 465, §3 (NEW); 1989, c. 895, §18 (AMD).]

Nothing in this section may prohibit disclosure by a person licensed under this chapter of information concerning a client when that disclosure is required by law and nothing in this section may modify or affect Title 22, sections 3477 to 3479-A and 4011-A to 4015. [2001, c. 345, §10 (AMD).]

This section may not be construed to prevent a 3rd-party reimburser from inspecting and copying, in the ordinary course of determining eligibility for or entitlement to benefits, any and all records relating to the diagnosis, treatment or other services provided to any persons, including a minor or incompetent, for which coverage, benefit or reimbursement is claimed as long as the policy or certificate under which the claim is made provides that access to those records is permitted. This section may not be construed to prevent access to any records pursuant to any peer review or utilization review procedures applied and implemented in good faith. [1989, c. 465, §3 (NEW).]

SECTION HISTORY
1989, c. 465, §3 (NEW). 1989, c. 752, (AMD). 1989, c. 895, §18 (AMD). 1989, c. 895, §§1,22 (AFF). 1991, c. 263, §§5,6 (AFF). 2001, c. 345, §10 (AMD).

§13863. REGISTRATION

1. **Registration.** An individual may not engage in procedures of counseling for a fee, monetary or otherwise, unless that individual is licensed pursuant to section l3858 or registers with the department pursuant to this section. Each individual who is not licensed and who engages in procedures of counseling shall register with the department every 2 years. Each individual who registers shall fill out a form designed by the board.

[1991, c. 548, Pt. A, §25 (RPR) .]

2. **Information required.** Each individual who registers shall provide the following information on the form designed by the board. The board shall compile this information and make it available to the public upon request and for a fee that covers the cost of making information available. The information that must be provided includes:

A. Name, address and telephone number of individuals registering; [1991, c. 548, Pt. A, §25 (RPR).]

B. Major fields of training and expertise, including degrees and professional certifications held and from where they were conferred; [1991, c. 548, Pt. A, §25 (RPR).]

C. Method of billing and previous experience and policy with regard to 3rd-party payments; [1991, c. 548, Pt. A, §25 (RPR).]

D. The fee schedule and provisions for pro bono work or sliding scale modifications of the fee schedule; and [1991, c. 548, Pt. A, §25 (RPR).]

E. A description of the individual's practice. [1991, c. 548, Pt. A, §25 (RPR).]

[1991, c. 548, Pt. A, §25 (RPR) .]

3. **Client bill of rights; code of ethics.** Each individual who registers under this section shall sign, post and make a copy available to each client of:

A. The client bill of rights approved by the board; [1991, c. 548, Pt. A, §25 (RPR).]

B. The code of professional ethics approved by the board; and [1991, c. 548, Pt. A, §25 (RPR).]

C. The name and telephone number of the board's complaint officer and a description of the complaint process. [1991, c. 548, Pt. A, §25 (RPR).]

[1991, c. 548, Pt. A, §25 (RPR) .]

4. **Registration fee.** Each individual registering under this section shall pay a registration fee, not to exceed $50 biennially, established by the board for the purposes of the administration of this section.

[1991, c. 548, Pt. A, §25 (RPR) .]

5. **Registration not allowed.** An individual, whose license, certification or registration has been revoked or suspended in this or any other state and in this or any related field, may not register to practice in this State unless the period of revocation or suspension has been completed and the board has conducted a competency review and determined that rehabilitation has taken place.

[1991, c. 548, Pt. A, §25 (RPR) .]

6. **Disciplinary action.** Any individual who is registered under this section is subject to section 13861-A.

[2007, c. 695, Pt. B, §19 (AMD) .]

7. **Registration not certification.** Registration does not imply or certify in any way that the registrant has met any standards or criteria of education or training.

[1991, c. 548, Pt. A, §25 (RPR) .]

8. **Effective date.** This section takes effect October 1, 1992.

[1991, c. 548, Pt. A, §25 (NEW) .]

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

[2007, c. 621, §17 (NEW) .]

SECTION HISTORY
1989, c. 878, §D11 (NEW). 1989, c. 895, §§19,22 (NEW). 1991, c. 263, §6 (AFF). 1991, c. 548, §A25 (RPR). 2007, c. 621, §17 (AMD). 2007, c. 695, Pt. B, §19 (AMD).

§13864. INACTIVE STATUS LICENSE

A licensee who does not perform any of the activities described in section 13851, subsection 8 and who wants to preserve the license while not engaged in any counseling activity may apply for an inactive status license pursuant to Title 10, section 8003, subsection 5-A, paragraph D, subparagraph (5). The fee for inactive status licensure is set under section 13859. During inactive status, the licensee must renew the license and pay the renewal fee as set under section 13859, but is not required to meet the continuing education requirements under section 13860, subsection 2. The board shall adopt rules by which an inactive status license may be reinstated. Rules adopted pursuant to this section are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A. [2007, c. 402, Pt. EE, §10 (AMD).]

SECTION HISTORY
1997, c. 128, §2 (NEW). 2007, c. 402, Pt. EE, §10 (AMD).

§13865. SERVICE OF PROCESS; FILING REQUIREMENT

Licensees who maintain licensure in this State and establish legal residency in another jurisdiction shall submit to the Board of Counseling Professionals Licensure within 30 days of residency in another jurisdiction an irrevocable consent to service of process on the licensee for an action filed in a court of this State arising out of the licensee's activities as a licensee in this State. Service may be made by delivery of the process to the Director of the Office of Professional and Occupational Regulation within the Department of Professional and Financial Regulation if, in the exercise of due diligence, a plaintiff can not effect personal service upon the licensee. [2003, c. 542, §5 (NEW); 2011, c. 286, Pt. B, §5 (REV).]

SECTION HISTORY
2003, c. 542, §5 (NEW). 2011, c. 286, Pt. B, §5 (REV).

Chapter 119: REGISTRATION FOR SHOPPING CARTS AND CONTAINERS FOR BAKERY, DAIRY AND OTHER PRODUCTS

§13851. DEFINITIONS

(REPEALED)

SECTION HISTORY
1989, c. 549, §§1,3 (NEW). 1989, c. 878, §A101 (RP).

§13852. NAME OR MARK; REGISTRATION

(REPEALED)

SECTION HISTORY
1989, c. 549, §§1,3 (NEW). 1989, c. 878, §A101 (RP).

§13853. PROHIBITIONS

(REPEALED)

SECTION HISTORY
1989, c. 549, §§1,3 (NEW). 1989, c. 878, §A101 (RP).

Chapter 121: PROFESSIONAL LAND SURVEYORS

§13901. DEFINITIONS

(REPEALED)

SECTION HISTORY
1989, c. 346, §3 (NEW). 1991, c. 509, §38 (AMD). 2013, c. 180, §6 (AFF). 2013, c. 180, §4 (RP).

§13902. BOARD OF LICENSURE FOR PROFESSIONAL LAND SURVEYORS; ESTABLISHMENT; COMPENSATION

(REPEALED)

SECTION HISTORY
1989, c. 346, §3 (NEW). 1993, c. 600, §A275 (AMD). 1995, c. 397, §115 (AMD). 2007, c. 402, Pt. FF, §1 (AMD). 2013, c. 180, §6 (AFF). 2013, c. 180, §4 (RP). 2013, c. 246, Pt. B, §26 (AMD).

§13903. BOARD OF LICENSURE OF PROFESSIONAL LAND SURVEYORS; POWERS AND DUTIES

(REPEALED)

SECTION HISTORY
1989, c. 346, §3 (NEW). 1993, c. 29, §1 (AMD). 1993, c. 659, §A11 (AMD). 1993, c. 659, §A15 (AFF). 1995, c. 397, §116 (AMD). 2007, c. 402, Pt. FF, §§2-4 (AMD). 2013, c. 180, §6 (AFF). 2013, c. 180, §4 (RP).

§13904. LICENSING

(REPEALED)

SECTION HISTORY
1989, c. 346, §3 (NEW). 1991, c. 509, §39 (AMD). 2007, c. 402, Pt. FF, §§5, 6 (AMD). 2013, c. 180, §6 (AFF). 2013, c. 180, §4 (RP).

§13905. REQUIREMENTS FOR LICENSING

(REPEALED)

SECTION HISTORY
1989, c. 346, §3 (NEW). 1991, c. 509, §§40, 41 (AMD). 1993, c. 307, §1 (AMD). 2007, c. 402, Pt. FF, §§7-10 (AMD). 2013, c. 180, §6 (AFF). 2013, c. 180, §4 (RP).

§13906. EXAMINATIONS

(REPEALED)

SECTION HISTORY
1989, c. 346, §3 (NEW). 2005, c. 262, §C1 (AMD). 2013, c. 180, §6 (AFF). 2013, c. 180, §4 (RP).

§13907. LICENSE; SEALS; STAMPS

(REPEALED)

SECTION HISTORY
1989, c. 346, §3 (NEW). 1991, c. 509, §42 (AMD). 2005, c. 262, §C2 (AMD). 2007, c. 402, Pt. FF, §11 (AMD). 2013, c. 180, §6 (AFF). 2013, c. 180, §4 (RP).

§13908. TERM OF LICENSE

(REPEALED)

SECTION HISTORY
1989, c. 346, §3 (NEW). 1993, c. 659, §A12 (AMD). 1993, c. 659, §A15 (AFF). 1995, c. 353, §§26,27 (AMD). 1999, c. 335, §1 (AMD). 1999, c. 335, §3 (AFF). 2005, c. 262, §C3 (AMD). 2007, c. 402, Pt. FF, §12 (AMD). 2013, c. 180, §6 (AFF). 2013, c. 180, §4 (RP).

§13909. DENIAL OR REFUSAL TO RENEW LICENSE; DISCIPLINARY ACTION

(REPEALED)

SECTION HISTORY
1989, c. 346, §3 (NEW). 2007, c. 402, Pt. FF, §13 (RPR). 2013, c. 180, §6 (AFF). 2013, c. 180, §4 (RP).

§13910. FEES

(REPEALED)

SECTION HISTORY
1989, c. 346, §3 (NEW). 1991, c. 509, §43 (AMD). 1995, c. 397, §117 (AMD). 2005, c. 262, §C4 (RP).

§13910-A. FEES

(REPEALED)

SECTION HISTORY
2005, c. 262, §C5 (NEW). 2011, c. 286, Pt. B, §5 (REV). 2013, c. 180, §6 (AFF). 2013, c. 180, §4 (RP).

§13911. FIRMS; PARTNERSHIPS; CORPORATIONS; JOINT STOCK ASSOCIATIONS

(REPEALED)

SECTION HISTORY
1989, c. 346, §3 (NEW). 2007, c. 621, §18 (RP).

§13912. EXEMPTIONS

(REPEALED)

SECTION HISTORY

1989, c. 346, §3 (NEW). 1991, c. 509, §§44, 45 (AMD). 2013, c. 180, §6 (AFF). 2013, c. 180, §4 (RP).

§13913. RIGHT OF ENTRY FOR PROFESSIONAL LAND SURVEYOR PERFORMING SURVEYING SERVICES

(REPEALED)

SECTION HISTORY
2003, c. 161, §1 (NEW). 2013, c. 180, §6 (AFF). 2013, c. 180, §4 (RP).

Chapter 122: REGISTRATION FOR SHOPPING CARTS AND CONTAINERS FOR BAKERY, DAIRY AND OTHER PRODUCTS

§13951. DEFINITIONS

(REPEALED)

SECTION HISTORY
1989, c. 878, §A102 (NEW). 1997, c. 623, §7 (RP).

§13952. NAME OR MARK; REGISTRATION

(REPEALED)

SECTION HISTORY
1989, c. 878, §A102 (NEW). 1997, c. 623, §7 (RP).

§13953. PROHIBITIONS

(REPEALED)

SECTION HISTORY
1989, c. 878, §A102 (NEW). 1997, c. 623, §7 (RP).

Chapter 123: REAL ESTATE APPRAISAL LICENSING AND CERTIFICATION

§13961. SHORT TITLE

(REPEALED)

SECTION HISTORY
1989, c. 806, §3 (NEW). 1999, c. 185, §4 (RP).

§13962. DEFINITIONS

(REPEALED)

SECTION HISTORY
1989, c. 806, §3 (NEW). 1991, c. 2, §§1,2 (AMD). 1993, c. 404, §§A17,18 (AMD). 1999, c. 185, §4 (RP).

§13963. EXEMPTION

(REPEALED)

SECTION HISTORY
1989, c. 806, §3 (NEW). 1995, c. 240, §2 (AMD). 1999, c. 185, §4 (RP).

§13964. LICENSE REQUIRED

(REPEALED)

SECTION HISTORY
1989, c. 806, §§3,7 (NEW). 1991, c. 2, §8 (AFF). 1991, c. 14, (AFF). 1991, c. 509, §51 (AFF). 1991, c. 801, §2 (AMD). 1991, c. 801, §§8,9 (AFF). 1993, c. 404, §A19 (AMD). 1999, c. 185, §4 (RP).

§13965. CIVIL ACTIONS

(REPEALED)

SECTION HISTORY
1989, c. 806, §3 (NEW). 1999, c. 185, §4 (RP).

§13966. VIOLATION; INJUNCTION

(REPEALED)

SECTION HISTORY
1989, c. 806, §3 (NEW). 1999, c. 185, §4 (RP).

§13967. BOARD OF REAL ESTATE APPRAISERS; ESTABLISHMENT

(REPEALED)

SECTION HISTORY
1989, c. 806, §3 (NEW). 1993, c. 404, §A20 (AMD). 1993, c. 600, §A276 (AMD). 1995, c. 397, §118 (AMD). 1997, c. 727, §C15 (AMD). 1999, c. 185, §4 (RP).

§13968. POWERS AND DUTIES OF BOARD

(REPEALED)

SECTION HISTORY
1989, c. 806, §3 (NEW). 1995, c. 397, §119 (AMD). 1999, c. 185, §4 (RP).

§13969. LICENSING

(REPEALED)

SECTION HISTORY
1989, c. 806, §3 (NEW). 1999, c. 185, §4 (RP).

§13970. TRANSITIONAL LICENSING

(REPEALED)

SECTION HISTORY
1989, c. 806, §3 (NEW). 1991, c. 2, §3 (AMD). 1991, c. 801, §3 (AMD). 1991, c. 801, §§9,10 (AFF). 1999, c. 185, §4 (RP).

§13971. SCOPE OF LICENSE

(REPEALED)

SECTION HISTORY
1989, c. 806, §3 (NEW). 1999, c. 185, §4 (RP).

§13972. REQUIREMENTS FOR APPRAISAL LICENSURE

(REPEALED)

SECTION HISTORY
1989, c. 806, §3 (NEW). 1991, c. 2, §4 (AMD). 1991, c. 801, §4 (AMD). 1991, c. 801, §§9,10 (AFF). 1993, c. 404, §A21 (AMD). 1995, c. 353, §§28,29 (AMD). 1999, c. 185, §4 (RP).

§13972-A. REQUIREMENTS FOR REAL ESTATE APPRAISER TRAINEE REGISTRATION

(REPEALED)

SECTION HISTORY
1993, c. 404, §A22 (NEW). 1995, c. 353, §§30,31 (AMD). 1999, c. 185, §4 (RP).

§13973. LICENSE OR CERTIFICATION DENIAL

(REPEALED)

SECTION HISTORY
1989, c. 806, §3 (NEW). 1993, c. 404, §A23 (AMD). 1999, c. 185, §4 (RP).

§13974. PLACE OF BUSINESS

(REPEALED)

SECTION HISTORY
1989, c. 806, §3 (NEW). 1999, c. 185, §4 (RP).

§13975. CHANGES

(REPEALED)

SECTION HISTORY
1989, c. 806, §3 (NEW). 1999, c. 185, §4 (RP).

§13976. STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE

(REPEALED)

SECTION HISTORY
1989, c. 806, §3 (NEW). 1991, c. 2, §5 (AMD). 1999, c. 185, §4 (RP).

§13977. NONRESIDENT LICENSURE

(REPEALED)

SECTION HISTORY
1989, c. 806, §3 (NEW). 1999, c. 185, §4 (RP).

§13978. TEMPORARY LICENSURE

(REPEALED)

SECTION HISTORY
1989, c. 806, §3 (NEW). 1995, c. 502, §H46 (AMD). 1999, c. 185, §4 (RP).

§13979. STATE-CERTIFIED RESIDENTIAL REAL ESTATE APPRAISER

(REPEALED)

SECTION HISTORY
1989, c. 806, §3 (NEW). 1991, c. 2, §§6,7 (AMD). 1991, c. 801, §5 (AMD). 1991, c. 801, §§9,10 (AFF). 1995, c. 353, §§32-35 (AMD). 1999, c. 185, §4 (RP).

§13980. FEES

(REPEALED)

SECTION HISTORY
1989, c. 806, §3 (NEW). RR 1991, c. 2, §123 (COR). 1991, c. 801, §6 (AMD). 1991, c. 801, §9 (AFF). 1995, c. 502, §H47 (AMD). 1999, c. 185, §4 (RP).

§13981. TERMS OF LICENSES

(REPEALED)

SECTION HISTORY
1989, c. 806, §3 (NEW). 1995, c. 353, §36 (AMD). 1999, c. 185, §4 (RP).

§13982. DISCIPLINARY ACTION; GROUNDS; PROCEDURE; COMPLAINTS

(REPEALED)

SECTION HISTORY
1989, c. 806, §3 (NEW). 1999, c. 185, §4 (RP).

§13983. REPEAL

(REPEALED)

SECTION HISTORY
1989, c. 806, §3 (NEW). 1991, c. 801, §9 (AFF). 1991, c. 801, §7 (RP).

§13984. CURRENT LICENSEES

(REPEALED)

SECTION HISTORY
1993, c. 404, §A24 (NEW). 1995, c. 240, §3 (AMD). 1999, c. 185, §4 (RP).

Chapter 124: REAL ESTATE APPRAISAL LICENSING AND CERTIFICATION

Subchapter 1: GENERAL PROVISIONS HEADING: PL 1999, C. 185, §5 (NEW)

§14001. SHORT TITLE

This chapter may be known and cited as the "Real Estate Appraisal Licensing and Certification Act." [1999, c. 185, §5 (NEW).]

SECTION HISTORY
1999, c. 185, §5 (NEW).

§14002. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1999, c. 185, §5 (NEW).]

1. **Appraisal.** "Appraisal" means an analysis, opinion or conclusion prepared by a real estate appraiser related to the nature, quality, value or utility of specified interests in, or aspects of, identified real property.

[1999, c. 185, §5 (NEW) .]

2. **Appraisal foundation.** "Appraisal foundation" means the appraisal foundation incorporated as an Illinois nonprofit corporation on November 30, 1987 and recognized under the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 as the organization that establishes the Uniform Standards of Professional Appraisal Practice.

[1999, c. 185, §5 (NEW) .]

3. **Appraiser qualifications board.** "Appraiser qualifications board" means an independent board of the appraisal foundation authorized to establish the minimum education, experience and examination criteria for licensed real estate appraisers.

[1999, c. 185, §5 (NEW) .]

4. **Appraisal report.** "Appraisal report" means any written or oral communication of an appraisal.

[1999, c. 185, §5 (NEW) .]

5. **Board.** "Board" means the Board of Real Estate Appraisers.

[1999, c. 185, §5 (NEW) .]

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

[1999, c. 185, §5 (NEW) .]

7. **Complex residential property.** "Complex residential property" means a residential property of one to 4 units exhibiting characteristics, determined by the board, that are not typical of the property type or marketplace, including, but not limited to:

A. Unusual forms of ownership, such as partial interests; [1999, c. 185, §5 (NEW).]

B. Property interests other than fee simple, such as those encumbered by easements, life estates or elaborate lease terms; [1999, c. 185, §5 (NEW).]

C. Unstable market conditions; [1999, c. 185, §5 (NEW).]

D. Changing patterns of land use when issues of compatibility, zoning and highest and best use are significant factors; [1999, c. 185, §5 (NEW).]

E. Environmentally contaminated properties; and [1999, c. 185, §5 (NEW).]

F. Physical characteristics, such as lot size, topography and building type, that are unusual. [1999, c. 185, §5 (NEW).]

[1999, c. 185, §5 (NEW) .]

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

[1999, c. 185, §5 (NEW) .]

9. **Federally related transaction.** "Federally related transaction" means any financial transaction related to real estate that:

A. A federal financial institution's regulatory agency or the Resolution Trust Corporation or its successor agency engages in, contracts for or regulates; and [2009, c. 112, Pt. A, §20 (NEW).]

B. Requires the services of a real estate appraiser. [2009, c. 112, Pt. A, §20 (NEW).]

[2009, c. 112, Pt. A, §20 (RPR) .]

10. **Noncomplex residential property.** "Noncomplex residential property" means property that is not defined as complex residential property in subsection 7.

[1999, c. 185, §5 (NEW) .]

11. **Real estate.** "Real estate" means an identified parcel of land, including improvements, if any.

[1999, c. 185, §5 (NEW) .]

12. **Real estate appraisal activity.** "Real estate appraisal activity" means the act or process of making an appraisal of real property and communicating a report.

[1999, c. 185, §5 (NEW) .]

13. **Real estate appraiser.** "Real estate appraiser" means a person who engages in real estate appraisal activity for a fee or other valuable consideration. "Real estate appraiser" includes review appraisers and appraisal administrators.

[1999, c. 185, §5 (NEW) .]

14. **Real property.** "Real property" means one or more defined interests, benefits or rights inherent in the ownership of real estate.

[1999, c. 185, §5 (NEW) .]

15. **Uniform Standards of Professional Appraisal Practice.** "Uniform Standards of Professional Appraisal Practice" means those standards adopted by the appraisal standards board of the appraisal foundation.

[1999, c. 185, §5 (NEW) .]

SECTION HISTORY

1999, c. 185, §5 (NEW). 2009, c. 112, Pt. A, §20 (AMD).

§14003. LICENSE REQUIRED

Except as provided in section 14004, it is unlawful for a person to prepare, for a fee or other valuable consideration, an appraisal or appraisal report relating to real estate or real property in this State without first obtaining a real estate appraisal license. Only an individual may be licensed under this chapter. This section does not apply to individuals who do not render significant professional assistance in arriving at a real estate appraisal analysis, opinion or conclusion. Nothing in this chapter prohibits any person who is licensed to practice in this State under any other law from engaging in the practice for which that person is licensed. [2007, c. 402, Pt. GG, §1 (AMD).]

SECTION HISTORY
1999, c. 185, §5 (NEW). 2007, c. 402, Pt. GG, §1 (AMD).

§14004. EXEMPTION

Real estate appraisal activity does not include: [1999, c. 185, §5 (NEW).]

1. **Salaried employees.** Appraisals prepared by a salaried employee of a real estate owner who, in the regular course of employment, makes appraisals of the real estate of the employer or of real estate under consideration for purchase or exchange for the sole consideration of the employer; and

[1999, c. 185, §5 (NEW) .]

2. **Brokers or associate brokers.** Appraisals or opinions of market value prepared by associate brokers or brokers who maintain active licenses pursuant to chapter 114 rendered for purposes other than for federally related transactions.

[1999, c. 185, §5 (NEW) .]

Any opinion or appraisal of market value rendered under this section must contain the following language in bold print in a prominent location: "This opinion or appraisal was prepared solely for the client, for the purpose and function stated in this report and is not intended for subsequent use. It was not prepared by a licensed or certified appraiser and may not comply with the appraisal standards of the uniform standards of professional appraisal practice." [1999, c. 185, §5 (NEW).]

SECTION HISTORY
1999, c. 185, §5 (NEW).

§14005. CIVIL ACTIONS

A person may not bring or maintain any action in the courts of this State for the collection of compensation for the performance of real estate appraisal services without first proving that the person was properly licensed by the board at the time the cause of action arose. [1999, c. 185, §5 (NEW).]

SECTION HISTORY
1999, c. 185, §5 (NEW).

§14006. VIOLATION

A person who violates section 14003 is subject to the provisions of Title 10, section 8003-C. [2007, c. 402, Pt. GG, §2 (AMD).]

SECTION HISTORY

1999, c. 185, §5 (NEW). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). RR 2001, c. 1, §42 (COR). 2001, c. 421, §B104 (AMD). 2001, c. 421, §C1 (AFF). 2007, c. 402, Pt. GG, §2 (AMD).

Subchapter 2: BOARD HEADING: PL 1999, C. 185, §5 (NEW)

§14011. BOARD OF REAL ESTATE APPRAISERS; ESTABLISHMENT

1. **Establishment.** The Board of Real Estate Appraisers is established within the department pursuant to Title 5, section 12004-A, subsection 9-B and shall carry out the purposes of this Act.

[1999, c. 185, §5 (NEW) .]

2. **Members.** The board consists of 7 members appointed by the Governor. Each member must be a resident of this State. The board consists of:

A. Two public members as defined in Title 5, section 12004-A; and [2007, c. 402, Pt. GG, §3 (AMD).]

B. Five members who hold valid appraiser licenses, including at least one member who holds a certified general license. [1999, c. 185, §5 (NEW).]

[2007, c. 402, Pt. GG, §3 (AMD) .]

3. **Geographic distribution.**

[2007, c. 402, Pt. GG, §3 (RP) .]

4. **Terms; removal.** Terms of the members of the board are for 3 years. Appointments of members must comply with Title 10, section 8009. Members may be removed by the Governor for cause.

[2007, c. 402, Pt. GG, §3 (AMD) .]

5. **Meetings; chair.** 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.

[2013, c. 246, Pt. B, §27 (AMD) .]

6. **Election of officers.**

[2007, c. 402, Pt. GG, §3 (RP) .]

7. **Exemption from standard.** The following are exempt from the requirements of the Uniform Standards of Professional Appraisal Practice, Standard 3 (2011):

A. A board member serving in the capacity of assigned complaint officer while performing an investigation or testifying at an adjudicatory hearing; [2011, c. 286, Pt. L, §1 (NEW).]

B. A board member serving in the capacity of reviewer while reviewing the work experience of an applicant for licensure; and [2011, c. 286, Pt. L, §1 (NEW).]

C. An investigator employed by or retained by the department while performing an investigation or testifying at an adjudicatory hearing. [2011, c. 286, Pt. L, §1 (NEW).]

[2011, c. 286, Pt. L, §1 (NEW) .]

SECTION HISTORY

1999, c. 185, §5 (NEW). 2007, c. 402, Pt. GG, §3 (AMD). 2011, c. 286, Pt. L, §1 (AMD). 2013, c. 246, Pt. B, §27 (AMD).

§14012. RULES

The board may establish guidelines and rules by which this chapter must be administered. Rules adopted pursuant to this chapter are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A. Rules are subject to Title 5, chapter 375, subchapter II. [1999, c. 185, §5 (NEW).]

1. **Hearings.**

[2007, c. 402, Pt. GG, §4 (RP) .]

2. **Investigations.**

[2007, c. 402, Pt. GG, §5 (RP) .]

3. **Standards.** The board may adopt rules consistent with the standards set forth in this chapter governing real estate appraisal conduct in order to establish standards of practice that serve the interest of the public and the appraisal business.

[1999, c. 185, §5 (NEW) .]

4. **License qualifications.** The board may adopt rules relating to the qualifications and application for any license authorized under this chapter that it considers necessary to ensure that applicants are sufficiently trustworthy and competent to make real estate appraisals.

[1999, c. 185, §5 (NEW) .]

5. **Education.** The board may adopt rules to be applied in determining whether educational programs meet the license qualifications required under this chapter.

[1999, c. 185, §5 (NEW) .]

6. **Other.** The board may adopt and enforce other rules that are necessary for the performance of its duties under this chapter.

[1999, c. 185, §5 (NEW) .]

7. **Fees.**

[2005, c. 262, Pt. D, §1 (RP) .]

SECTION HISTORY
1999, c. 185, §5 (NEW). 2005, c. 262, §D1 (AMD). 2007, c. 402, Pt. GG, §§4, 5 (AMD).

§14012-A. FEES

The Director of the Office of Professional and Occupational Regulation within the Department of Professional and Financial Regulation may establish by rule fees for purposes authorized under this chapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for any one

purpose may not exceed $450 annually. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2009, c. 241, Pt. D, §1 (AMD); 2011, c. 286, Pt. A, §5 (REV).]

SECTION HISTORY
2005, c. 262, §D2 (NEW). 2009, c. 241, Pt. D, §1 (AMD). 2011, c. 286, Pt. B, §5 (REV).

§14013. HEARINGS

(REPEALED)

SECTION HISTORY
1999, c. 185, §5 (NEW). 1999, c. 687, §F10 (AMD). 2007, c. 402, Pt. GG, §6 (RP).

§14014. GROUNDS FOR DISCIPLINARY ACTION

(REPEALED)

SECTION HISTORY
1999, c. 185, §5 (NEW). 2007, c. 402, Pt. GG, §7 (RP).

§14014-A. DENIAL OF OR REFUSAL TO RENEW LICENSE; DISCIPLINARY ACTION

In addition to the grounds enumerated in Title 10, section 8003, subsection 5-A, paragraph A, the board may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A for: [2007, c. 402, Pt. GG, §8 (NEW).]

1. **Lack of trustworthiness.** Lack of trustworthiness and competence to conduct real estate appraisal activity in a manner that safeguards the interests of the public;

[2007, c. 402, Pt. GG, §8 (NEW) .]

2. **Misconduct.** The commission of an act or omission in the practice of real estate appraising that constitutes dishonesty, fraud or misrepresentation with the intent to benefit the licensee or another person or with the intent to injure another person;

[2007, c. 402, Pt. GG, §8 (NEW) .]

3. **Court judgment.** The entry of a final civil or criminal judgment against a licensee on grounds of fraud, misrepresentation or deceit in the making of an appraisal of real estate;

[2007, c. 402, Pt. GG, §8 (NEW) .]

4. **Unauthorized payment.** Payment of a finder's fee or a referral fee to a person who does not have an appraiser license in this State in connection with an appraisal of real estate or real property in this State;

[2007, c. 402, Pt. GG, §8 (NEW) .]

5. **Misrepresentation of professional qualifications.** Making a false or misleading statement in that portion of a written appraisal report that deals with professional qualifications or in any testimony concerning professional qualifications;

[2007, c. 402, Pt. GG, §8 (NEW) .]

6. **Predetermined appraisal result.** Accepting a fee for performing an independent appraisal service when, in fact, the fee is or was contingent upon the appraiser's reporting a predetermined analysis, opinion or conclusion or is or was contingent upon the analysis, opinion, conclusion or valuation reached or upon the consequences resulting from the appraisal assignment;

[2007, c. 402, Pt. GG, §8 (NEW) .]

7. **Lack of diligence.** Failure or refusal, without good cause, to exercise reasonable diligence in developing an appraisal, preparing an appraisal report or communicating an appraisal;

[2007, c. 402, Pt. GG, §8 (NEW) .]

8. **Negligence or incompetence.** Negligence or incompetence in developing an appraisal, preparing an appraisal report or communicating an appraisal;

[2007, c. 402, Pt. GG, §8 (NEW) .]

9. **Breach of confidentiality.** A violation of the confidential nature of individual, business or governmental records to which a licensee or applicant gained access through employment or engagement as an appraiser;

[2007, c. 402, Pt. GG, §8 (NEW) .]

10. **Suspension or revocation of license.** Having had a professional or occupational license suspended or revoked for disciplinary reasons or an application rejected for reasons related to untrustworthiness within 3 years prior to the date of application; and

[2007, c. 402, Pt. GG, §8 (NEW) .]

11. **Failure to meet professional qualifications; failure to submit complete application.** Failure to meet the professional qualifications for licensure as provided in this subchapter or failure to submit a complete application within 30 days after being notified of the materials needed to complete the application.

[2007, c. 402, Pt. GG, §8 (NEW) .]

SECTION HISTORY
2007, c. 402, Pt. GG, §8 (NEW).

Subchapter 3: CERTIFIED GENERAL, CERTIFIED RESIDENTIAL, REAL PROPERTY APPRAISER, APPRAISER TRAINEE, TEMPORARY LICENSE HEADING: PL 1999, C. 185, §5 (NEW)

§14021. GENERAL QUALIFICATIONS

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

This section governs the application for licensure under this chapter. [1999, c. 185, §5 (NEW).]

1. **Application.** The applicant must submit a properly completed application on forms furnished by the board, together with a required fee as set under section 14012-A.

[2005, c. 262, Pt. D, §3 (AMD) .]

2. **Age.** The applicant must be at least 18 years of age at the time of application.

[1999, c. 185, §5 (NEW) .]

3. **Residence.** The applicant shall provide evidence of the applicant's legal residence.

[1999, c. 185, §5 (NEW) .]

4. **High school.** The applicant must be a high school graduate or hold an equivalency certificate.

[1999, c. 185, §5 (NEW) .]

5. **Reputation.** The applicant must have a good reputation for honesty, truthfulness, fair dealing and competency.

[2013, c. 217, Pt. J, §6 (AMD) .]

6. **Other.** The applicant shall comply with other requirements that may be prescribed by the board from time to time.

[1999, c. 185, §5 (NEW) .]

7. (TEXT EFFECTIVE 1/1/15) **Fingerprinting.** In accordance with standards adopted by the appraiser qualifications board, an applicant shall submit a set of the applicant's fingerprints, taken by a law enforcement officer, and any other information necessary for a statewide and nationwide criminal history record check to be completed by the Department of Public Safety, State Bureau of Identification and the Federal Bureau of Investigation, commencing at the time determined by the appraiser qualifications board. All costs associated with the criminal history record check are the responsibility of the applicant and must be submitted with the fingerprints. Criminal history records provided to the board of real estate appraisers are confidential and may only be used to determine an applicant's eligibility for licensure. The subject of a Federal Bureau of Investigation criminal history record check may obtain a copy of a criminal history record check by following the procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33. The subject of a state criminal record check may inspect and review criminal history record information pursuant to Title 16, section 709.

[2013, c. 547, §1 (NEW); 2013, c. 547, §19 (AFF) .]

SECTION HISTORY
1999, c. 185, §5 (NEW). 2005, c. 262, §D3 (AMD). 2007, c. 402, Pt. GG, §9 (AMD). 2013, c. 217, Pt. J, §6 (AMD). 2013, c. 547, §1 (AMD). 2013, c. 547, §19 (AFF).

§14022. PLACE OF BUSINESS

A licensee shall designate and maintain a principal place of business where real estate appraisal records may be inspected for purposes consistent with this chapter. A nonresident is not required to maintain a place of business in this State if the nonresident maintains an active place of business in another jurisdiction.
[2013, c. 217, Pt. H, §1 (AMD).]

SECTION HISTORY
1999, c. 185, §5 (NEW). 2009, c. 112, Pt. A, §21 (AMD). 2013, c. 217, Pt. H, §1 (AMD).

§14023. LICENSE DENIAL

(REPEALED)

SECTION HISTORY
1999, c. 185, §5 (NEW). 2007, c. 402, Pt. GG, §10 (RP).

§14024. NONRESIDENTS AND APPLICANTS LICENSED IN ANOTHER JURISDICTION

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

1. **Consent to service.**

[2013, c. 217, Pt. K, §9 (RP) .]

2. (TEXT EFFECTIVE UNTIL 1/1/15) **Reciprocal agreements.** The board may enter into reciprocal agreements with other jurisdictions that have substantially equivalent licensure laws and accord substantially equal reciprocal rights to residents licensed in good standing in this State.

[1999, c. 185, §5 (NEW) .]

2. (TEXT REPEALED 1/1/15) **Reciprocal agreements.**

[2013, c. 547, §19 (AFF); 2013, c. 547, §2 (RP) .]

3. (TEXT EFFECTIVE UNTIL 1/1/15) **Applicants licensed in another jurisdiction.** An applicant who is licensed under the laws of another jurisdiction is governed by this subsection.

A. An applicant who is licensed under the laws of a jurisdiction that has a current reciprocal agreement with the board may obtain a license upon such terms and conditions as may be agreed upon through the reciprocal agreement. [1999, c. 185, §5 (NEW).]

B. An applicant who is licensed, in good standing, under the laws of a jurisdiction that has not entered into a reciprocal agreement with the board may qualify for licensure by submitting evidence, satisfactory to the board, that the applicant has met all of the qualifications for licensure equivalent to those as set forth by this subchapter for that level of licensure. [1999, c. 185, §5 (NEW).]

[1999, c. 185, §5 (NEW) .]

3. (TEXT EFFECTIVE 1/1/15) **Applicants licensed in another jurisdiction.** An applicant who is licensed under the laws of another jurisdiction may be issued a license if:

A. [2013, c. 547, §19 (AFF); 2013, c. 547, §3 (RP).]

B. [2013, c. 547, §19 (AFF); 2013, c. 547, §3 (RP).]

C. The applicant holds a license in good standing from a jurisdiction with requirements for licensure that meet or exceed the license requirements as set forth by this subchapter for that level of licensure; and [2013, c. 547, §3 (NEW); 2013, c. 547, §19 (AFF).]

D. The appraiser licensing program of the other jurisdiction complies with Title XI of the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 as determined by the federal agency responsible for the determination under that Act. [2013, c. 547, §3 (NEW); 2013, c. 547, §19 (AFF).]

[2013, c. 547, §3 (AMD); 2013, c. 547, §19 (AFF) .]

SECTION HISTORY

1999, c. 185, §5 (NEW). 2013, c. 217, Pt. K, §9 (AMD). 2013, c. 547, §§2, 3 (AMD). 2013, c. 547, §19 (AFF).

§14025. LICENSE RENEWAL

A license expires on the date set by the Commissioner of Professional and Financial Regulation pursuant to Title 10, section 8003, subsection 4 for the licensing period for which the license was issued. A license may be renewed upon receipt of an application for renewal and payment of the renewal fee as set under section 14012-A and upon the applicant presenting evidence of compliance with the requirements of section 14027. Licenses may be renewed up to 90 days after the date of expiration upon payment of a late fee, as set under section 14012-A, in addition to a required renewal fee as set under section 14012-A. [2009, c. 241, Pt. D, §2 (AMD).]

The board shall deny a renewal license to any applicant whose license has lapsed for more than 90 days unless the applicant satisfies the provisions governing new applicants under this subchapter, except that the board may waive the education and examination requirements for new applicants if the renewal application is received, together with a late fee, renewal fee and additional late fee as set under section 14012-A, within 2 years from the date of that expiration. [2007, c. 402, Pt. GG, §11 (AMD).]

SECTION HISTORY
1999, c. 185, §5 (NEW). 2005, c. 262, §D4 (AMD). 2007, c. 402, Pt. GG, §11 (AMD). 2009, c. 241, Pt. D, §2 (AMD).

§14026. CHANGES

(REPEALED)

SECTION HISTORY
1999, c. 185, §5 (NEW). 2007, c. 402, Pt. GG, §12 (RP).

§14027. CONTINUING EDUCATION

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

1. (TEXT EFFECTIVE UNTIL 1/1/15) **Requirement.** As a prerequisite to renewal of a license, an applicant must have completed continuing education as set forth by rules adopted by the board.

[2011, c. 286, Pt. L, §2 (AMD) .]

1. (TEXT EFFECTIVE 1/1/15) **Requirement.** As a prerequisite to renewal of a license, an applicant must have completed continuing education as set forth by rules adopted by the board. An applicant may not repeat for credit the same continuing education course offering within a license renewal cycle.

[2013, c. 547, §4 (AMD); 2013, c. 547, §19 (AFF) .]

2. **Program approval.** Each application for approval of a continuing education program or courses must be submitted according to the rules adopted by the board together with a required fee as set under section 14012-A.

[2005, c. 262, Pt. D, §5 (NEW) .]

SECTION HISTORY
1999, c. 185, §5 (NEW). 2005, c. 262, §D5 (RPR). 2005, c. 518, §1 (AMD). 2009, c. 241, Pt. D, §3 (AMD). 2011, c. 286, Pt. L, §2 (AMD). 2013, c. 547, §4 (AMD). 2013, c. 547, §19 (AFF).

§14028. STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE

A real estate appraiser licensed under this chapter shall comply with generally accepted standards of professional appraisal practice and generally accepted ethical rules to be observed by a real estate appraiser. Generally accepted standards of professional appraisal practice and ethics are currently, at a minimum, those established by the Uniform Standards of Professional Appraisal Practice. [1999, c. 185, §5 (NEW).]

SECTION HISTORY
1999, c. 185, §5 (NEW).

§14029. INDIVIDUAL LICENSING

(REPEALED)

SECTION HISTORY
1999, c. 185, §5 (NEW). 2007, c. 402, Pt. GG, §13 (RP).

§14030. CERTIFIED GENERAL REAL PROPERTY APPRAISER

(REPEALED)

SECTION HISTORY
1999, c. 185, §5 (NEW). 2005, c. 262, §D6 (AMD). 2005, c. 518, §2 (AMD). MRSA T. 32, §14030, sub-§3 (RP).

§14031. CERTIFIED RESIDENTIAL REAL PROPERTY APPRAISER

(REPEALED)

SECTION HISTORY
1999, c. 185, §5 (NEW). 2005, c. 262, §D7 (AMD). 2005, c. 518, §3 (AMD). MRSA T. 32, §14031, sub-§3 (RP).

§14032. LICENSED REAL PROPERTY APPRAISER

(REPEALED)

SECTION HISTORY
1999, c. 185, §5 (NEW). 2005, c. 262, §D8 (AMD). 2005, c. 518, §4 (AMD). MRSA T. 32, §14032, sub-§3 (RP).

§14033. TRAINEE REAL PROPERTY APPRAISER

(REPEALED)

SECTION HISTORY
1999, c. 185, §5 (NEW). 2005, c. 518, §5 (AMD). MRSA T. 32, §14033, sub-§5 (RP).

§14034. TEMPORARY LICENSE

A temporary license may be issued to a nonresident in accordance with this section. [1999, c. 185, §5 (NEW).]

1. **Scope of license.** A temporary license authorizes the holder to perform the appraisal of real estate or real property in this State required by a contract.

[1999, c. 185, §5 (NEW) .]

2. **Professional qualifications.** An applicant for a temporary license must:

A. Submit evidence that the applicant is licensed in good standing under the laws of another jurisdiction; and [2013, c. 588, Pt. A, §42 (RPR).]

B. [2013, c. 217, Pt. K, §11 (RP).]

C. Submit a copy of the contract for appraisal services that requires the applicant to appraise real estate or real property in this State and certify that the contract is in full force and effect. [1999, c. 185, §5 (NEW).]

[2013, c. 588, Pt. A, §42 (AMD) .]

3. **License limitations.** A temporary license expires upon the completion of the appraisal work required by the contract or upon the expiration of a period of 6 months from the date of issuance, whichever occurs first. A temporary license may be extended for a period of 6 months from the expiration date of the original license upon request of the license holder and as necessary to fulfill the terms of the contract for appraisal services.

[1999, c. 185, §5 (NEW) .]

SECTION HISTORY
1999, c. 185, §5 (NEW). 2013, c. 217, Pt. H, §2 (AMD). 2013, c. 217, Pt. K, §§10, 11 (AMD). 2013, c. 588, Pt. A, §42 (AMD).

§14035. CERTIFIED GENERAL REAL PROPERTY APPRAISER

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

1. **Scope of license.** A certified general real property appraiser license entitles the holder to appraise all types of real property.

[2005, c. 518, §6 (NEW) .]

2. (TEXT EFFECTIVE UNTIL 1/1/15) **Professional qualifications.** An applicant for a certified general real property appraiser license must meet the licensing requirements promulgated by the appraiser qualifications board. Each applicant must:

A. Hold a bachelor's or higher degree from an accredited college or university or have successfully passed 30 semester credit hours in the following college-level subject matter courses from an accredited college, junior college, community college or university:

(1) English composition;

(2) Microeconomics;

(3) Macroeconomics;

(4) Finance;

(5) Algebra, geometry or higher mathematics;

(6) Statistics;

(7) Computers, word processing and spreadsheets;

(8) Business or real estate law; and

(9) Two elective courses in accounting, geography, agricultural economics, business management or real estate.

An applicant may receive credit for a college course for an exam taken through a college-level examination program if a college or university accredited by a commission on colleges, a regional or national accreditation association or an accrediting agency that is recognized by the United States Secretary of Education accepts the exam and issues a transcript showing its approval; [2011, c. 286, Pt. L, §3 (AMD).]

B. Satisfactorily complete 300 creditable class hours as specified in the appraiser qualifications board's required core curriculum, which must include the 15-hour national uniform standards of professional appraisal practice course and examination; [2005, c. 518, §6 (NEW).]

C. Pass the appraiser qualifications board's uniform state-certified general real property appraiser examination; and [2005, c. 518, §6 (NEW).]

D. Hold a valid license under this chapter and demonstrate 3,000 hours of appraisal experience obtained during no fewer than 30 months, including 1,500 hours of nonresidential appraisal work. [2005, c. 518, §6 (NEW).]

[2011, c. 286, Pt. L, §3 (AMD) .]

2. (TEXT EFFECTIVE 1/1/15) **Professional qualifications.** An applicant for a certified general real property appraiser license must meet the licensing requirements established by the appraiser qualifications board. As a prerequisite to taking the examination required by section 14035-A, an applicant must:

A. Hold a bachelor's or higher degree from an accredited college or university or have successfully passed 30 semester credit hours in the following college-level subject matter courses from an accredited college, junior college, community college or university:

(1) English composition;

(2) Microeconomics;

(3) Macroeconomics;

(4) Finance;

(5) Algebra, geometry or higher mathematics;

(6) Statistics;

(7) Computers, word processing and spreadsheets;

(8) Business or real estate law; and

(9) Two elective courses in accounting, geography, agricultural economics, business management or real estate.

An applicant may receive credit for a college course for an exam taken through a college-level examination program if a college or university accredited by a commission on colleges, a regional or national accreditation association or an accrediting agency that is recognized by the United States Secretary of Education accepts the exam and issues a transcript showing its approval; [2011, c. 286, Pt. L, §3 (AMD).]

A. Hold a bachelor's or higher degree from an accredited college or university;

[2013, c. 547, §5 (AMD); 2013, c. 547, §19 (AFF).]

B. Satisfactorily complete 300 creditable class hours as specified in the appraiser qualifications board's required core curriculum, which must include the 15-hour national uniform standards of professional appraisal practice course and examination; and [2013, c. 547, §5 (AMD); 2013, c. 547, §19 (AFF).]

C. [2013, c. 547, §19 (AFF); 2013, c. 547, §5 (RP).]

D. Hold a valid license under this chapter and demonstrate 3,000 hours of appraisal experience obtained during no fewer than 30 months, including 1,500 hours of nonresidential appraisal work. [2005, c. 518, §6 (NEW).]

[2013, c. 547, §5 (AMD); 2013, c. 547, §19 (AFF) .]

3. (TEXT EFFECTIVE UNTIL 1/1/15) **Effective date.** This section takes effect January 1, 2008.

[2005, c. 518, §6 (NEW) .]

3. (TEXT REPEALED 1/1/15) **Effective date.**

[2013, c. 547, §19 (AFF); 2013, c. 547, §6 (RP) .]

SECTION HISTORY
2005, c. 518, §6 (NEW). 2011, c. 286, Pt. L, §3 (AMD). 2013, c. 547, §§5, 6 (AMD). 2013, c. 547, §19 (AFF).

§14035-A. REQUIRED EXAMINATION; CERTIFIED GENERAL REAL PROPERTY APPRAISER

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE 1/1/15)

An applicant for a certified general real property appraiser license must pass the appraiser qualifications board's uniform state-certified general real property appraiser examination within 24 months of the date the applicant is eligible to take the examination. An applicant must apply for a certified general real property appraiser license within 24 months of successfully completing the examination. [2013, c. 547, §7 (NEW); 2013, c. 547, §19 (AFF).]

SECTION HISTORY
2013, c. 547, §7 (NEW). 2013, c. 547, §19 (AFF).

§14036. CERTIFIED RESIDENTIAL REAL PROPERTY APPRAISER

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

1. **Scope of license.** A certified residential real property appraiser license entitles the holder to appraise residential real estate or real property of one to 4 residential units, without regard to value or complexity and to appraise vacant or unimproved land that is to be used for one to 4 family units or for which the highest and best use is for one to 4 family units. A certified residential real property appraiser license does not entitle the holder to appraise subdivisions for which a development analysis and appraisal is necessary.

[2005, c. 518, §7 (NEW) .]

2. (TEXT EFFECTIVE UNTIL 1/1/15) **Professional qualifications.** An applicant for a certified residential real property appraiser license must meet the licensing requirements promulgated by the appraiser qualifications board. Each applicant must:

A. Hold an associate's or higher degree from an accredited college or university or have successfully passed 21 semester credit hours in the following collegiate level subject matter courses from an accredited college, junior college, community college or university:

(1) English composition;

(2) Principles of microeconomics or macroeconomics;

(3) Finance;

(4) Algebra, geometry or higher mathematics;

(5) Statistics;

(6) Computers, word processing and spreadsheets; and

(7) Business or real estate law.

An applicant may receive credit for a college course for an exam taken through a college-level examination program if a college or university accredited by a commission on colleges, a regional or national accreditation association or an accrediting agency that is recognized by the United States Secretary of Education accepts the exam and issues a transcript showing its approval; [2011, c. 286, Pt. L, §4 (AMD).]

B. Satisfactorily complete 200 creditable class hours as specified in the appraiser qualifications board's required core curriculum, which must include the 15-hour national uniform standards of professional appraisal practice course and examination; [2005, c. 518, §7 (NEW).]

C. Pass the appraiser qualifications board's uniform state-certified residential real property appraiser examination; and [2005, c. 518, §7 (NEW).]

D. Hold a valid license under this chapter and demonstrate 2,500 hours of appraisal experience obtained during no fewer than 24 months, including complex residential property appraisals completed under the supervision of a certified residential real property appraiser or a certified general real property appraiser under section 14035. [2009, c. 112, Pt. A, §22 (AMD).]

[2011, c. 286, Pt. L, §4 (AMD) .]

2. (TEXT EFFECTIVE 1/1/15) **Professional qualifications.** An applicant for a certified residential real property appraiser license must meet the licensing requirements established by the appraiser qualifications board. As a prerequisite to taking the examination required by section 14036-A, an applicant must:

A. Hold an associate's or higher degree from an accredited college or university or have successfully passed 21 semester credit hours in the following collegiate level subject matter courses from an accredited college, junior college, community college or university:

(1) English composition;

(2) Principles of microeconomics or macroeconomics;

(3) Finance;

(4) Algebra, geometry or higher mathematics;

(5) Statistics;

(6) Computers, word processing and spreadsheets; and

(7) Business or real estate law.

An applicant may receive credit for a college course for an exam taken through a college-level examination program if a college or university accredited by a commission on colleges, a regional or national accreditation association or an accrediting agency that is recognized by the United States Secretary of Education accepts the exam and issues a transcript showing its approval; [2011, c. 286, Pt. L, §4 (AMD).]

A. Hold a bachelor's or higher degree from an accredited college or university;

[2013, c. 547, §8 (AMD); 2013, c. 547, §19 (AFF).]

B. Satisfactorily complete 200 creditable class hours as specified in the appraiser qualifications board's required core curriculum, which must include the 15-hour national uniform standards of professional appraisal practice course and examination; and [2013, c. 547, §8 (AMD); 2013, c. 547, §19 (AFF).]

C. [2013, c. 547, §19 (AFF); 2013, c. 547, §8 (RP).]

D. Hold a valid license under this chapter and demonstrate 2,500 hours of appraisal experience obtained during no fewer than 24 months, including complex residential property appraisals completed under the supervision of a certified residential real property appraiser or a certified general real property appraiser under section 14035. [2009, c. 112, Pt. A, §22 (AMD).]

D. Hold a valid license under this chapter and demonstrate 2,500 hours of appraisal experience obtained during no fewer than 24 months, including complex residential property appraisals completed under the supervision of a certified residential real property appraiser or a certified general real property appraiser under section 14035. [2009, c. 112, Pt. A, §22 (AMD).]

[2013, c. 547, §8 (AMD); 2013, c. 547, §19 (AFF) .]

3. (TEXT EFFECTIVE UNTIL 1/1/15) **Effective date.** This section takes effect January 1, 2008.

[2005, c. 518, §7 (NEW) .]

3. (TEXT REPEALED 1/1/15) **Effective date.**

[2013, c. 547, §19 (AFF); 2013, c. 547, §9 (RP) .]

SECTION HISTORY
2005, c. 518, §7 (NEW). 2009, c. 112, Pt. A, §22 (AMD). 2011, c. 286, Pt. L, §4 (AMD). 2013, c. 547, §§8, 9 (AMD). 2013, c. 547, §19 (AFF).

§14036-A. REQUIRED EXAMINATION; CERTIFIED RESIDENTIAL REAL PROPERTY APPRAISER

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE 1/1/15)

An applicant for a certified residential real property appraiser license must pass the appraiser qualifications board's uniform state-certified residential real property appraiser examination within 24 months of the date the applicant is eligible to take the examination. An applicant must apply for a certified residential real property appraiser license within 24 months of successfully completing the examination. [2013, c. 547, §10 (NEW); 2013, c. 547, §19 (AFF).]

SECTION HISTORY
2013, c. 547, §10 (NEW). 2013, c. 547, §19 (AFF).

§14037. LICENSED RESIDENTIAL REAL PROPERTY APPRAISER

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

1. **Scope of license.** For federally related transactions, a residential real property appraiser license entitles the holder to appraise noncomplex residential property of one to 4 units having a transaction value of less than $1,000,000 and complex residential property of one to 4 units having a transaction value of less than $250,000. For purposes of this section, "complex residential property of one to 4 units" means property that is atypical based on the nature of the property, the form of ownership or the market conditions. For nonfederally related transaction appraisals, "transaction value" means market value. A residential real property appraiser license entitles the holder to appraise vacant or unimproved land that is used for one to 4 family purposes or for which the highest and best use is for one to 4 family purposes. A residential real property appraiser license does not entitle the holder to appraise subdivisions for which a development analysis and appraisal is necessary.

[2005, c. 518, §8 (NEW) .]

2. (TEXT EFFECTIVE UNTIL 1/1/15) **Professional qualifications.** Each applicant for a residential real property appraiser license must meet the licensing requirements promulgated by the appraiser qualifications board. Each applicant must:

A. Satisfactorily complete 150 creditable class hours as specified in the appraiser qualifications board's required core curriculum, which must include the 15-hour national uniform standard of professional appraisal practice course and examination; [2005, c. 518, §8 (NEW).]

B. Pass the appraiser qualifications board's licensed residential real property appraiser examination; and [2005, c. 518, §8 (NEW).]

C. Hold a valid license under this chapter and demonstrate 2,000 hours of appraisal experience obtained during no fewer than 12 months. [2005, c. 518, §8 (NEW).]

[2005, c. 518, §8 (NEW) .]

2. (TEXT EFFECTIVE 1/1/15) **Professional qualifications.** An applicant for a residential real property appraiser license must meet the licensing requirements established by the appraiser qualifications board. As a prerequisite to taking the examination required by section 14037-A, an applicant must:

A. Satisfactorily complete 150 creditable class hours as specified in the appraiser qualifications board's required core curriculum, which must include the 15-hour national uniform standard of professional appraisal practice course and examination; [2005, c. 518, §8 (NEW).]

B. [2013, c. 547, §19 (AFF); 2013, c. 547, §11 (RP).]

C. Hold a valid license under this chapter and demonstrate 2,000 hours of appraisal experience obtained during no fewer than 12 months; and [2013, c. 547, §11 (AMD); 2013, c. 547, §19 (AFF).]

D. Hold an associate or higher degree from an accredited college or university or have successfully completed 30 semester credit hours of college-level courses from an accredited college, junior college, community college or university. [2013, c. 547, §11 (NEW); 2013, c. 547, §19 (AFF).]

[2013, c. 547, §11 (AMD); 2013, c. 547, §19 (AFF) .]

3. (TEXT EFFECTIVE UNTIL 1/1/15) **Effective date.** This section takes effect January 1, 2008.

[2005, c. 518, §8 (NEW) .]

3. (TEXT REPEALED 1/1/15) **Effective date.**

[2013, c. 547, §19 (AFF); 2013, c. 547, §12 (RP) .]

SECTION HISTORY

2005, c. 518, §8 (NEW). 2013, c. 547, §§11, 12 (AMD). 2013, c. 547, §19 (AFF).

§14037-A. REQUIRED EXAMINATION; RESIDENTIAL REAL PROPERTY APPRAISER

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE 1/1/15)

An applicant for a residential real property appraiser license must pass the appraiser qualifications board's licensed residential real property appraiser examination within 24 months of the date the applicant is eligible to take the examination. An applicant must apply for a residential real property appraiser license within 24 months of successfully completing the examination. [2013, c. 547, §13 (NEW); 2013, c. 547, §19 (AFF).]

SECTION HISTORY
2013, c. 547, §13 (NEW). 2013, c. 547, §19 (AFF).

§14038. TRAINEE REAL PROPERTY APPRAISER

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

1. **Scope of license.** A trainee real property appraiser license entitles the holder to appraise properties pursuant to this section under the supervision of a certified residential real property appraiser or a certified general real property appraiser. The trainee may appraise properties that the supervising certified residential real property appraiser or certified general real property appraiser is permitted by this chapter to appraise and is qualified to appraise.

[2005, c. 518, §9 (NEW) .]

2. (TEXT EFFECTIVE UNTIL 1/1/15) **Professional qualification.** Each applicant for a trainee real property appraiser license must meet the licensing requirements promulgated by the appraiser qualifications board. Each applicant must satisfactorily complete 75 creditable class hours as specified in the appraiser qualifications board's required core curriculum, which must include the 15-hour national uniform standards of professional appraisal practice course and examination.

[2005, c. 518, §9 (NEW) .]

2. (TEXT EFFECTIVE 1/1/15) **Professional qualifications.** An applicant for a trainee real property appraiser license must meet the licensing requirements established by the appraiser qualifications board. An applicant must satisfactorily complete:

A. Seventy-five creditable class hours as specified in the appraiser qualifications board's required core curriculum, which must include the 15-hour national uniform standards of professional appraisal practice course, within 5 years of the date of application for licensure; and [2013, c. 547, §14 (NEW); 2013, c. 547, §19 (AFF).]

B. A supervisory appraiser and trainee appraiser course as specified by the appraiser qualifications board. [2013, c. 547, §14 (NEW); 2013, c. 547, §19 (AFF).]

[2013, c. 547, §14 (AMD); 2013, c. 547, §19 (AFF) .]

3. (TEXT EFFECTIVE UNTIL 1/1/15) **Filing with board.** Before employing a trainee real property appraiser, a supervising certified residential real property appraiser or certified general real property appraiser must register the name and starting date of employment of that trainee with the board.

[2005, c. 518, §9 (NEW) .]

3. (TEXT REPEALED 1/1/15) **Filing with board.**

[2013, c. 547, §19 (AFF); 2013, c. 547, §15 (RP) .]

4. (TEXT EFFECTIVE UNTIL 1/1/15) **Trainee supervision limitations.** A trainee real property appraiser may have more than one supervising certified residential real property appraiser or certified general real property appraiser, but a supervising appraiser may not supervise more than 3 trainee real property appraisers at one time.

[2005, c. 518, §9 (NEW) .]

4. (TEXT EFFECTIVE 1/1/15) **Number of supervisors.** A trainee real property appraiser may have more than one supervising certified residential real property appraiser or certified general real property appraiser.

[2013, c. 547, §16 (AMD); 2013, c. 547, §19 (AFF) .]

5. **Limited license term.** A trainee real property appraiser license may only be renewed for 5 annual terms. After 6 years, the trainee is not eligible for license renewal but must qualify as a new applicant.

[2009, c. 241, Pt. D, §4 (AMD) .]

6. (TEXT EFFECTIVE UNTIL 1/1/15) **Effective date.** This section takes effect January 1, 2008.

[2005, c. 518, §9 (NEW) .]

6. (TEXT REPEALED 1/1/15) **Effective date.**

[2013, c. 547, §19 (AFF); 2013, c. 547, §17 (RP) .]

SECTION HISTORY
2005, c. 518, §9 (NEW). 2009, c. 241, Pt. D, §4 (AMD). 2013, c. 547, §§14-17 (AMD). 2013, c. 547, §19 (AFF).

§14039. SUPERVISORY APPRAISER

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE 1/1/15)

1. **Scope of practice.** A supervisory appraiser is responsible for the training, guidance and direct supervision of a trainee real property appraiser as set forth by rules adopted by the board.

[2013, c. 547, §18 (NEW); 2013, c. 547, §19 (AFF) .]

2. **Certified level license required.** A certified general real property appraiser or certified residential real property appraiser who has held a license for a minimum of 3 years and within the last 3 years has not had a license suspended or revoked or been subject to other disciplinary action that limits the licensee's legal eligibility to perform real estate appraisal activity may supervise a trainee real property appraiser.

[2013, c. 547, §18 (NEW); 2013, c. 547, §19 (AFF) .]

3. **Completion of supervisory course.** A supervisory appraiser must satisfactorily complete a supervisory appraiser and trainee appraiser course as specified by the appraiser qualifications board to supervise a trainee real property appraiser licensed on or after January 1, 2015.

[2013, c. 547, §18 (NEW); 2013, c. 547, §19 (AFF) .]

4. **Filing with board.** Before employing a trainee real property appraiser, a supervising certified residential real property appraiser or certified general real property appraiser must register the name and starting date of employment of that trainee with the board.

[2013, c. 547, §18 (NEW); 2013, c. 547, §19 (AFF) .]

5. **Limitation on number of trainees.** A supervisory appraiser may not supervise more than 3 trainee real property appraisers at one time.

[2013, c. 547, §18 (NEW); 2013, c. 547, §19 (AFF) .]

SECTION HISTORY
2013, c. 547, §18 (NEW). 2013, c. 547, §19 (AFF).

Chapter 125: EMPLOYEE LEASING COMPANIES

§14051. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1991, c. 468, §4 (NEW).]

1. **Client company.** "Client company" means a person, association, partnership, corporation or other entity that leases employees from an employee leasing company pursuant to contract.

[1991, c. 468, §4 (NEW) .]

1-A. **Commissioner.** "Commissioner" means the Commissioner of Labor.

[1995, c. 618, §18 (NEW) .]

2. **Controlling person.** "Controlling person" means:

A. A person or entity that owns a 5% or greater interest in an employee leasing company or possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of an employee leasing company through ownership of voting securities, by contract or otherwise, and is actively involved in the day-to-day management of the company; or [1991, c. 468, §4 (NEW).]

B. A natural person employed, appointed or authorized by an employee leasing company to enter into a contractual relationship with a client company on behalf of the employee leasing company. [1991, c. 468, §4 (NEW).]

[1991, c. 468, §4 (NEW) .]

3. **Employee leasing company.** "Employee leasing company" means a sole proprietorship, partnership, corporation or other form of business entity, a substantial portion of the business of which consists of leasing employees to one or more client companies under contractual arrangements that are characterized by the following.

A. Employment responsibilities are carried out by the employee leasing company or are shared by the employee leasing company and the client company. [1991, c. 468, §4 (NEW).]

B. Direction and control of employees provided by the employee leasing company are handled by the employee leasing company or are shared by the employee leasing company and the client company. "Direction and control" includes the right of the employee leasing company to hire and fire employees. [1991, c. 468, §4 (NEW).]

C. The leasing arrangement is long term and does not include arrangements to provide temporary help services. "Temporary help services" means a service whereby an organization hires its own employees and assigns them to a 3rd party to support or supplement the 3rd party's work force in work situations such as employee absences, temporary skill shortages, seasonal work load conditions and special assignments and projects. [1991, c. 468, §4 (NEW).]

D. The leasing arrangement does not include providing labor dispute workers. "Labor dispute worker" means a worker who is furnished to an entity to replace workers involved in strikes, lockouts or other labor activities. [1991, c. 468, §4 (NEW).]

[1991, c. 468, §4 (NEW) .]

4. **Registrant.** "Registrant" means an employee leasing company that registers under this chapter.

[1991, c. 468, §4 (NEW) .]

5. **Superintendent.** "Superintendent" means the Superintendent of Consumer Credit Protection.

[2013, c. 257, §1 (AMD) .]

SECTION HISTORY
1991, c. 468, §4 (NEW). 1995, c. 618, §18 (AMD). 2013, c. 257, §1 (AMD).

§14052. REGISTRATION REQUIRED

An employee leasing company may not engage in business from offices in this State or enter into any contractual relationship with a client company for the purpose of providing employees for business conducted by the client company in this State unless the employee leasing company is registered under this chapter. An employee leasing company or person may not use the name or title "staff leasing company," "employee leasing company," "registered staff leasing company," or "staff leasing services company" or otherwise represent that it is registered under this chapter unless the entity or person is registered under this chapter. [1995, c. 618, §19 (AMD).]

SECTION HISTORY
1991, c. 468, §4 (NEW). 1995, c. 618, §19 (AMD).

§14053. REGISTRATION PROCESS

1. **Statement.** Except as otherwise provided in this section, each employee leasing company required to be registered under section 14052 shall provide the superintendent with information required by the superintendent on forms that the superintendent specifies. At a minimum, employee leasing companies shall provide the following information:

A. The name or names under which the registrant conducts business; [1991, c. 468, §4 (NEW).]

B. The address of the principal place of business of the employee leasing company and the address of each office it maintains in this State; [1991, c. 468, §4 (NEW).]

C. The employee leasing company's taxpayer or employer identification number; [1991, c. 468, §4 (NEW).]

D. A list by jurisdiction of each name under which the employee leasing company has operated in the preceding 5 years, including any alternative names, names of predecessors and, if known, successor business entities; [1991, c. 468, §4 (NEW).]

E. A list of all persons or entities that own a 5% or greater interest in the employee leasing company at the time of application and a list of persons who formerly owned a 5% or greater interest in the employee leasing company or its predecessors in the preceding 5 years; and [1995, c. 618, §20 (AMD).]

F. A list of the cancellations or nonrenewals of workers' compensation insurance issued to the employee leasing company or its predecessors in the preceding 5 years. The list must include the policy or certificate numbers, names of insurers or other providers of coverage, dates of cancellation and reasons for cancellation. If coverage has not been canceled or has been renewed, the registration must include a sworn affidavit signed by the chief executive officer of the employee leasing company attesting to that fact. [1991, c. 468, §4 (NEW).]

[1997, c. 29, §1 (AMD) .]

2. **Renewal.** Prior to January 31st of each year or any other time fixed by the superintendent, each registrant shall renew its registration by notifying the superintendent of any changes in the information previously provided pursuant to this section.

[1997, c. 29, §1 (AMD) .]

3. **List.** The superintendent shall maintain a list of employee leasing companies registered under this chapter.

[1997, c. 29, §1 (AMD) .]

4. **Forms.** The superintendent may prescribe forms necessary to promote the efficient administration of this section.

[1997, c. 29, §1 (AMD) .]

5. **Existing companies.**

[1995, c. 618, §20 (RP) .]

SECTION HISTORY
1991, c. 468, §4 (NEW). 1995, c. 618, §20 (AMD). 1997, c. 29, §1 (AMD).

§14054. FEES

1. **Amount.** The following are the registration fees under this chapter.

A. Upon filing a registration statement under section 14053, subsection 1, each employee leasing company shall pay an initial registration fee of $500. [1991, c. 468, §4 (NEW).]

B. Upon renewing its registration statement under section 14053, subsection 2, each employee leasing company shall pay an annual renewal fee of $100. [1991, c. 468, §4 (NEW).]

[1991, c. 468, §4 (NEW) .]

2. **Treatment of fees.** Fees provided for by this chapter are appropriated for the use of the Bureau of Consumer Credit Protection. Any balance of these funds does not lapse but must be carried forward to be expended for the same purpose in the following year.

[2013, c. 257, §2 (RPR) .]

SECTION HISTORY
1991, c. 468, §4 (NEW). 2013, c. 257, §2 (AMD).

§14055. INSURANCE; UNEMPLOYMENT INSURANCE; BENEFIT PLANS

1. **Benefits.** The following provisions govern the provision of benefits by employee leasing companies to their employees.

A. A registered employee leasing company qualifies as an "other group" within the meaning of Title 24-A, sections 2612-A and 2808 for purposes of procurement of group life and health insurance with respect to employees leased to a client company. A registered employee leasing company qualifies as an eligible group within the meaning of Title 24-A, section 2884 for purchase of group legal services insurance. Any employee welfare plan or benefit, other than workers' compensation insurance, provided to employees leased to a client company on less than a fully insured basis may be provided only subject to and in accordance with Title 24-A, chapter 81. [1995, c. 618, §21 (RPR).]

B. The Superintendent of Insurance shall adopt rules governing the provision of workers' compensation insurance as required by Title 39-A, chapter 9 for workers provided by an employee leasing company to any client company. These rules must be consistent with subsection 2 and reflect consideration of the needs and operational efficiencies of employee leasing companies and the costs to the workers' compensation system. If either the employee leasing company or the client company has secured the payment of compensation in conformity with former Title 39, chapter 1 or Title 39-A, chapter 9, the immunity from liability described in that chapter extends to and is binding on the client company, the employee leasing company, all employees leased to any client company and any other employees of the employee leasing company or the client company. An employee leasing company is not responsible for securing the payment of compensation in conformity with Title 39-A nor deprived of the defenses listed in Title 39-A, section 103 with respect to those persons for whom the provision of benefits is not required under Title 39-A in the absence of an employee leasing arrangement. [2013, c. 257, §3 (AMD).]

[2013, c. 257, §3 (AMD) .]

2. **Workers' compensation.** Workers' compensation insurance for employees leased to client companies is subject to the following.

A. Under rules adopted pursuant to subsection 1, paragraph B, the Superintendent of Insurance may provide a determination of the circumstances and conditions, if any, under which an employee leasing company may be the policyholder of a workers' compensation insurance policy providing coverage to employees leased to client companies. Additionally or alternatively, the Superintendent of Insurance may require by rule that:

(1) The employee leasing company purchase separate policies through the Maine Employers' Mutual Insurance Company, established pursuant to Title 24-A, section 3703, for client companies subject to Title 39-A; and

(2) The policies be assigned to one servicing carrier and, to the extent practical, administered on a unified basis. The Superintendent of Insurance also may provide by rule that the employee leasing company or the President of the Maine Employers' Mutual Insurance Company request from the Superintendent of Insurance a waiver of a rule adopted pursuant to this subparagraph if it is impractical for one servicing carrier to service all the client companies of an employee leasing company. [2013, c. 257, §4 (AMD).]

B. When workers' compensation coverage is provided by means of insurance maintained by the employee leasing company through the residual market mechanism, the rules may further provide for the application of experience modification factors, premium surcharges and deductibles consistent with Title 24-A, section 2386. To the extent that a workers' compensation insurance policy is issued to an employee leasing company, experience modification factors applicable to a company that becomes a client company of the employee leasing company after the effective date of this section are calculated by using the client company's experience modification factor:

(1) Throughout the term of the employee leasing arrangement; or

(2) For no more than the first 3 years of the employee leasing arrangement if the requirements of the rules adopted by the superintendent are met. [1999, c. 1, §47 (COR).]

C. Each employee leasing company that carries workers' compensation insurance for its leased employees shall maintain and make available to its workers' compensation carrier information required by rules adopted by the superintendent pursuant to this chapter. An employee leasing company shall promptly notify its workers' compensation insurance carrier and the residual market manager of the termination of the employee leasing company's relationship with any client company for which it provides workers' compensation insurance. [1991, c. 468, §4 (NEW).]

[2013, c. 257, §4 (AMD) .]

3. **Unemployment insurance.** An employee leasing company's responsibility for unemployment insurance is governed by Title 26, section 1221-A and as follows.

A. During the term of the leasing arrangement, the employee leasing company is responsible for payment of unemployment contributions, penalties and interest due pursuant to Title 26, chapter 13 on wages paid to employees leased to client companies, except for compensation paid to sole proprietors of or partners in the client company. [1991, c. 468, §4 (NEW); 1991, c. 468, §6 (AFF).]

B. The employee leasing company shall report all unemployment contributions due under its state employer identification number, using its contribution rate. The employee leasing company shall keep separate records and submit separate quarterly wage reports to the Bureau of Unemployment Compensation for each of its client companies. [1995, c. 560, Pt. G, §18 (AMD).]

[1995, c. 560, Pt. G, §18 (AMD) .]

4. **Other insurance.** Employees leased to a client company by an employee leasing company remain the employees of the client company for purposes of general liability insurance, automobile insurance, fidelity bonds, surety bonds and employer's liability insurance carried by the client company. Employees leased to a client company by an employee leasing company are not deemed employees of the employee leasing company for purposes of general liability insurance, automobile insurance, fidelity bonds, surety bonds or employer's liability insurance carried by the employee leasing company unless the employees are included by specific reference in the applicable insurance contract or bond.

[1991, c. 468, §4 (NEW) .]

5. **Disclosure.** The employee leasing company shall disclose to client companies services to be rendered, including costs, and the respective rights and obligations of the parties prior to entering into or receiving a leasing arrangement. This disclosure must include a statement that the client company may take complaints to the Bureau of Consumer Credit Protection.

[2013, c. 257, §5 (AMD) .]

SECTION HISTORY
1991, c. 468, §4 (NEW). 1991, c. 468, §6 (AFF). 1991, c. 885, §§E42,43 (AMD). 1991, c. 885, §E47 (AFF). 1995, c. 560, §G18 (AMD). 1995, c. 618, §§21,22 (AMD). 1997, c. 29, §2 (AMD). RR 1999, c. 1, §47 (COR). 2013, c. 257, §§3-5 (AMD).

§14056. EXEMPTION

Nothing in this chapter exempts a client company of an employee leasing company nor an employee leased to the client company by the employee leasing company from any other state, local or federal license or registration requirements. Any individual who must be licensed, registered or certified according to law and who is a leased employee is deemed an employee of the client company for purposes of the license, registration or certification. An employee leasing company is not liable for the general debts or obligations of a client company with which it has entered into an employee leasing arrangement, except for the payment of unemployment contributions as required in section 14055. [1991, c. 468, §4 (NEW).]

SECTION HISTORY
1991, c. 468, §4 (NEW).

§14057. ADVERTISING PROHIBITION

An organization registered under this chapter may not directly or indirectly refer to that registration in any advertisements, marketing materials or publications. [1991, c. 468, §4 (NEW).]

SECTION HISTORY
1991, c. 468, §4 (NEW).

§14058. PENALTIES

1. **Injunction.** The State may seek to enjoin any person or employee leasing company from violating this chapter.

[1991, c. 468, §4 (NEW) .]

2. **Penalty.** The following penalties apply to violations of this chapter.

A. A person or employee leasing company that violates this chapter is subject to a fine of $100 per day for each violation. [2003, c. 452, Pt. R, §10 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. A corporation, partnership, sole proprietorship or other form of business entity and an officer, director, general partner, agent, representative or employee of any of those types of business entities that knowingly uses or participates in any employee leasing agreement, arrangement or mechanism for the purpose of depriving one or more insurers of premiums or avoiding the calculation of the proper contribution rate for purposes of unemployment contributions commits a Class E crime. [2003, c. 452, Pt. R, §10 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. R, §10 (RPR); 2003, c. 452, Pt. X, §2 (AFF) .]

3. **Rebuttable presumption.** When an employee leasing company leases employees to only one client company and its affiliates, there is a rebuttable presumption that the client company entered into an employee leasing arrangement to avoid the calculation of the proper contribution rate for payment of unemployment contributions.

[1991, c. 468, §4 (NEW) .]

4. **Costs.** Any costs incurred by the superintendent in investigating violations of or enforcing this chapter must be paid by the person or entity found to have violated this chapter.

[1991, c. 468, §4 (NEW) .]

SECTION HISTORY
1991, c. 468, §4 (NEW). 2003, c. 452, §R10 (AMD). 2003, c. 452, §X2 (AFF).

§14059. RULES

The superintendent may adopt rules to administer the provisions of this chapter for the protection of client companies, including rules regarding the ability of the Bureau of Consumer Credit Protection to receive and respond to complaints. Rules adopted pursuant to this section are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A. [2013, c. 257, §6 (NEW).]

SECTION HISTORY
2013, c. 257, §6 (NEW).

Chapter 126: BARBERING AND COSMETOLOGY LICENSING

Subchapter 1: GENERAL PROVISIONS HEADING: PL 1991, C. 397, §6 (NEW)

§14201. SHORT TITLE

This chapter may be known and cited as the "Barbering and Cosmetology Licensure Act." [1991, c. 397, §6 (NEW).]

SECTION HISTORY
1991, c. 397, §6 (NEW).

§14202. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1991, c. 397, §6 (NEW).]

1. **Apprentice.**

[1993, c. 630, Pt. B, §12 (RP) .]

2. **Board.**

[2009, c. 369, Pt. B, §1 (RP) .]

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

[1991, c. 397, §6 (NEW) .]

3-A. **Demonstrator.** "Demonstrator" means a person who is licensed to practice cosmetology, barbering, limited barbering, aesthetics or nail technology and engages in performing demonstrations outside establishments licensed by the director in the use of machines, articles or techniques pertaining to practices licensed under this chapter. The term "demonstrator" does not include one who performs demonstrations solely for persons currently licensed to practice cosmetology, barbering, limited barbering, aesthetics or nail technology under this chapter or under the licensing provision of any other state.

[2011, c. 286, Pt. M, §1 (AMD) .]

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

[1991, c. 397, §6 (NEW) .]

4-A. **Director.** "Director" means the Director of the Office of Professional and Occupational Regulation within the department.

[2009, c. 369, Pt. B, §3 (NEW); 2011, c. 286, Pt. B, §5 (REV) .]

5. **Establishment; shop.** "Establishment" or "shop" means a beauty shop or salon, cosmetology shop or salon, barber shop or salon or hair styling shop or salon, or any premises, structure, building or part of a building where any activity licensed under this chapter is practiced.

[1991, c. 397, §6 (NEW) .]

5-A. **Limited barbering.** "Limited barbering" means any one or any combination of the following practices, when done for hire or compensation, upon the head of the human body for cosmetic purposes and not for the treatment of disease or physical or mental ailments:

A. Shaving, trimming or cutting the beard or mustache or removing superfluous hair; [2011, c. 286, Pt. M, §2 (NEW).]

B. Massaging of the scalp, face and neck and giving a facial and scalp treatment with creams, lotions, oils and other cosmetic preparations, either by hand or mechanical appliances, but such appliances may not be galvanic or faradic; [2011, c. 286, Pt. M, §2 (NEW).]

C. Shampooing or applying hair tonics and conditioners; [2011, c. 286, Pt. M, §2 (NEW).]

D. Cutting, arranging and styling the human hair; or [2011, c. 286, Pt. M, §2 (NEW).]

E. Cutting, fitting or styling hairpieces or wigs. [2011, c. 286, Pt. M, §2 (NEW).]

[2011, c. 286, Pt. M, §2 (NEW) .]

6. **Mobile shop.** "Mobile shop" means a mobile vehicle or mobile structure designed, constructed or adapted to serve as a shop at a number of sites and capable of being readily moved from any site at any time.

[1991, c. 397, §6 (NEW) .]

7. **Practice of aesthetics.** "The practice of aesthetics" means the performance by any person for hire or compensation of any one or a combination of the following practices:

A. Beautifying, massaging, cleansing, stimulating, toning, or exercising the skin of the human body by the use of cosmetic preparations, tonics, lotions, creams, antiseptics or clays or any device, electrical or otherwise, for the care of the skin; [1991, c. 397, §6 (NEW).]

B. Applying makeup or eyelashes to any person; or [1991, c. 397, §6 (NEW).]

C. Trimming or tinting eyebrows and eyelashes. [1991, c. 397, §6 (NEW).]

The practice of aesthetics under this subsection does not include the diagnosis, treatment or therapy of any dermatological condition.

[1991, c. 397, §6 (NEW) .]

8. **Practice of barbering.** "The practice of barbering" means any one or any combination of the following practices, when done for hire or compensation, upon the upper part of the human body for cosmetic purposes and not for the treatment of disease or physical or mental ailments:

A. Shaving or trimming the beard, manicuring the fingernails, or cutting, arranging, waving or styling the hair; [1991, c. 397, §6 (NEW).]

B. Giving facial and scalp massage or treatments with cosmetic preparations, either by hand or mechanical or electrical appliances; [1991, c. 397, §6 (NEW).]

C. Singeing, dyeing, tinting, bleaching or shampooing the hair or applying cosmetic preparations to the hair, scalp, face, neck or upper part of the body; [1991, c. 397, §6 (NEW).]

D. Removing superfluous hair from the face, neck or upper part of the body; or [1991, c. 397, §6 (NEW).]

E. Cutting, fitting, coloring or styling hairpieces or wigs. [1991, c. 397, §6 (NEW).]

[1991, c. 397, §6 (NEW) .]

9. **Practice of cosmetology.** "The practice of cosmetology" means the performance by any person for hire or compensation of any one or more of the following practices:

A. Beautifying, massaging, cleansing, stimulating, toning, manipulating or exercising the skin of the human body by the use of cosmetic preparations, tonics, lotions, creams, antiseptics, or clays or any device, electrical or otherwise, for the care of the skin; [1991, c. 397, §6 (NEW).]

B. Applying makeup or eyelashes to any person; [1991, c. 397, §6 (NEW).]

C. Manicuring or pedicuring the nails of any person; [1991, c. 397, §6 (NEW).]

D. Arranging, dressing, curling, waving, cleansing, cutting, trimming, removing, singeing, bleaching, coloring, relaxing or similarly treating the hair of any person; [1991, c. 397, §6 (NEW).]

E. Arranging, brushing, dressing, curling, waving, cleansing, shampooing, cutting, trimming, singeing, bleaching, coloring, tinting, dyeing, straightening, relaxing or similarly treating a wig, wiglet or hairpiece made of human hair, animal hair or synthetics; or [1991, c. 397, §6 (NEW).]

F. Teaching or demonstrating cosmetology, hairdressing or beauty culture. [1991, c. 397, §6 (NEW).]

[1991, c. 397, §6 (NEW) .]

10. **Nail technology.** "Nail technology," which includes manicuring and pedicuring services, means the performance by any person for hire or compensation of any one or more of the following practices:

A. Applying the hands or mechanical or electrical apparatus with or without cosmetic preparations, lotions, creams or antiseptics to cut, trim, shape, polish, color, tint or apply artificial nails to the nails of any person or to massage, cleanse or beautify the hands or feet of any person. [2011, c. 286, Pt. M, §3 (AMD).]

[2011, c. 286, Pt. M, §3 (AMD) .]

10-A. **School.** "School" means a school or education institution where a program of study in cosmetology, barbering, limited barbering, aesthetics or nail technology or the instruction of cosmetology, barbering, limited barbering, aesthetics or nail technology is offered or taught.

[2011, c. 286, Pt. M, §4 (AMD) .]

11. **Student.** "Student" means any person duly enrolled in a school licensed by the director and engaged in learning and acquiring a knowledge of the practice of:

A. Cosmetology; [1991, c. 397, §6 (NEW).]

B. Barbering or limited barbering; [2011, c. 286, Pt. M, §5 (AMD).]

C. Aesthetics; [2011, c. 286, Pt. M, §5 (AMD).]

D. Nail technology; or [2011, c. 286, Pt. M, §5 (AMD).]

E. Instructing. [2011, c. 286, Pt. M, §5 (NEW).]

[2011, c. 286, Pt. M, §5 (AMD) .]

12. **Tanning device.**

[1995, c. 187, §1 (RP) .]

13. **Trainee.** "Trainee" means any person who, under the direct supervision of a person licensed under this chapter in the same category as the training performed and in accordance with rules adopted by the director, is engaged in learning and acquiring a knowledge of the practice of:

A. Cosmetology; [1993, c. 630, Pt. B, §13 (NEW).]

B. Barbering or limited barbering; [2011, c. 286, Pt. M, §6 (AMD).]

C. Aesthetics; or [1993, c. 630, Pt. B, §13 (NEW).]

D. Nail technology. [2011, c. 286, Pt. M, §6 (AMD).]

[2011, c. 286, Pt. M, §6 (AMD) .]

SECTION HISTORY
1991, c. 397, §6 (NEW). RR 1993, c. 2, §34 (COR). 1993, c. 630, §§B12,13 (AMD). 1993, c. 659, §A13 (AMD). 1995, c. 80, §1 (AMD). 1995, c. 187, §1 (AMD). 1997, c. 210, §14 (AMD). 2007, c. 402, Pt. HH, §§1, 2 (AMD). 2009, c. 369, Pt. B, §§1-5 (AMD). 2011, c. 286, Pt. B, §5 (REV). 2011, c. 286, Pt. M, §§1-6 (AMD).

§14203. EXEMPTIONS; EXCEPTIONS

1. **Exemptions.** The prohibitions and penalties of this chapter do not apply to the following persons when acting within the scope of their profession or occupation:

A. Persons authorized by law of this State to practice medicine and surgery and persons under the supervision and control of those persons; [1993, c. 179, §1 (AMD).]

B. Commissioned medical officers of the United States Armed Forces; [1991, c. 397, §6 (NEW).]

C. Registered nurses, licensed practical nurses and nurse's aides; [1991, c. 397, §6 (NEW).]

D. Persons who practice upon members of their immediate families or on persons residing in their household and who receive no payment for such practice; [1993, c. 179, §1 (AMD).]

E. Persons employed by licensed establishments who provide shampooing services within the licensed establishments; [1997, c. 210, §15 (AMD).]

F. Persons employed to apply special make-up designed for theater lighting to a person who requires this make-up for an appearance in the theater or a movie, on television or as a model; and [1997, c. 210, §16 (AMD).]

G. Persons licensed under chapter 21 who practice the funeral service profession on human remains in a licensed funeral establishment. [1997, c. 210, §17 (NEW).]

[1997, c. 210, §§15-17 (AMD) .]

2. **Exceptions.** The practice of cosmetology, barbering, limited barbering, aesthetics or nail technology may be carried on only by persons duly licensed to practice in this State and only in an establishment licensed by the director, except as provided in this subsection. Duly licensed persons may practice their respective practices:

A. On patients in hospitals or nursing homes; [1991, c. 397, §6 (NEW).]

B. On residents of youth camps; [2009, c. 211, Pt. B, §29 (AMD).]

C. On inmates or residents of institutions of the Department of Health and Human Services; [1991, c. 397, §6 (NEW); 1995, c. 560, Pt. K, §82 (AMD); 1995, c. 560, Pt. K, §83 (AFF); 2001, c. 354, §3 (AMD); 2003, c. 689, Pt. B, §6 (REV).]

D. On invalids or handicapped persons in those persons' places of residence; [1991, c. 397, §6 (NEW).]

E. On residents of nursing homes; [1991, c. 397, §6 (NEW).]

F. On hotel or motel occupants in their hotel or motel rooms; [1991, c. 397, §6 (NEW).]

G. On persons in their residences; [1997, c. 210, §18 (AMD).]

H. On persons in their private businesses; [1997, c. 210, §19 (AMD).]

I. On human remains in licensed funeral establishments; and [1997, c. 210, §20 (NEW).]

J. On persons at special events with a special event services permit. Services rendered pursuant to this paragraph must be rendered for compensation. A person may not perform special event services without first obtaining a special event services permit from the director. The services provided pursuant to the special event services permit must comply with any applicable public health and safety requirements, the requirements of this chapter and all federal, state and local laws. [2009, c. 369, Pt. B, §6 (AMD).]

[2011, c. 286, Pt. M, §7 (AMD) .]

SECTION HISTORY
1991, c. 397, §6 (NEW). 1991, c. 728, §1 (AMD). 1993, c. 179, §1 (AMD). 1995, c. 560, §K82 (AMD). 1995, c. 560, §K83 (AFF). 1997, c. 210, §§15-20 (AMD). 2001, c. 354, §3 (AMD). 2003, c. 689, §B6 (REV). 2007, c. 402, Pt. HH, §3 (AMD). 2009, c. 48, §§1-3 (AMD). 2009, c. 211, Pt. B, §29 (AMD). 2009, c. 369, Pt. B, §6 (AMD). 2011, c. 286, Pt. M, §7 (AMD).

§14204. INSTRUCTORS

A person may not instruct in any of the branches of aesthetics, barbering, limited barbering, cosmetology or nail technology unless that person holds a valid license to practice and is authorized to instruct in each respective practice issued under this chapter, except that when specifically authorized by law, physicians may instruct without holding a license to practice in a branch of aesthetics, barbering, limited barbering, cosmetology or nail technology. [2011, c. 286, Pt. M, §8 (AMD).]

Upon satisfactory completion of an instructor examination, the applicant must pay the fee as set under section 14238 to be licensed to instruct. [2011, c. 286, Pt. M, §8 (AMD).]

SECTION HISTORY
1991, c. 397, §6 (NEW). 1997, c. 210, §21 (AMD). 1999, c. 386, §U1 (AMD). 2007, c. 402, Pt. HH, §§4, 5 (AMD). 2009, c. 369, Pt. B, §7 (AMD). 2011, c. 286, Pt. M, §8 (AMD).

§14205. VIOLATIONS

1. **Penalties.** A person is subject to the provisions of section 14236-A and Title 10, section 8003, subsection 5-A if that person:

A. Practices barbering, limited barbering, cosmetology, nail technology or aesthetics in this State without having obtained a license as provided by this chapter; [2011, c. 286, Pt. M, §9 (AMD).]

B. Employs a person to practice barbering, limited barbering, cosmetology, nail technology or aesthetics who does not have a license; or [2011, c. 286, Pt. M, §9 (AMD).]

C. Falsely professes to be qualified to practice or instruct barbering, limited barbering, cosmetology, nail technology or aesthetics under this chapter. [2011, c. 286, Pt. M, §9 (AMD).]

[2011, c. 286, Pt. M, §9 (AMD) .]

2. **Court action.**

[2007, c. 402, Pt. HH, §6 (RP) .]

SECTION HISTORY
1991, c. 397, §6 (NEW). 1993, c. 630, §B14 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 402, Pt. HH, §6 (AMD). 2011, c. 286, Pt. M, §9 (AMD).

Subchapter 2: DIRECTOR'S POWERS AND DUTIES HEADING: PL 1991, C. 397, §6 (NEW); PL 2009, C. 369, PT. B, §44 (AMD)

§14211. BOARD

(REPEALED)

SECTION HISTORY
RR 1991, c. 1, §47 (COR). 1991, c. 397, §6 (NEW). 1993, c. 600, §A277 (AMD). 1995, c. 397, §120 (AMD). 1997, c. 771, §7 (RP).

§14211-A. BOARD

(REPEALED)

SECTION HISTORY
1997, c. 771, §8 (NEW). 1999, c. 687, §E14 (AMD). 2001, c. 599, §1 (AMD). 2001, c. 599, §3 (AFF). 2005, c. 235, §§5,6 (AMD). 2007, c. 402, Pt. HH, §7 (AMD). 2009, c. 369, Pt. B, §8 (RP).

§14212. POWERS AND DUTIES

(REPEALED)

SECTION HISTORY
1991, c. 397, §6 (NEW). 1995, c. 397, §121 (AMD). 1997, c. 210, §§22,23 (AMD). 1997, c. 771, §9 (AMD). 2001, c. 599, §2 (AMD). 2007, c. 402, Pt. HH, §8 (AMD). 2009, c. 369, Pt. B, §9 (RP).

§14212-A. DIRECTOR'S POWERS AND DUTIES

1. **Duties.** The director shall administer, coordinate and enforce this chapter. The director may appoint an advisory committee to assist the director on any matter that may arise under this chapter, as needed.

[2009, c. 369, Pt. B, §10 (NEW) .]

2. **Rule-making authority.** The director shall establish guidelines and adopt rules necessary for the proper administration and enforcement of this chapter. Rules adopted pursuant to this section are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A. The rules must address, but are not limited to, the following:

A. Requirements for the licensure of aestheticians, barbers, limited barbers, cosmetologists, nail technicians, demonstrators, instructors and trainees; [2011, c. 286, Pt. M, §10 (AMD).]

B. Requirements for licensing, operating and inspecting schools. At a minimum, the rules must include standards relating to educational programs, instructor qualifications, school operation, academic and student records and record keeping, health, safety and sanitation, physical facilities of the school and off-

site classrooms, payment of refunds, notices and information to be provided to students and credit for education obtained in subjects that are considered substantially equivalent to applied courses offered and consistent with this chapter; [2009, c. 369, Pt. B, §10 (NEW).]

C. Requirements for licensing and operation of physical facilities and inspection of establishments and booths consistent with this chapter; and [2009, c. 369, Pt. B, §10 (NEW).]

D. The establishment of sanitation, health and safe practice standards, including but not limited to blood spill procedures and proper use of tools, implements, equipment and electrical and nonelectrical machines and devices used in connection with the practices authorized under this chapter. [2009, c. 369, Pt. B, §10 (NEW).]

[2011, c. 286, Pt. M, §10 (AMD) .]

3. **Inspections.** The director or a designee of the director may enter licensed premises to conduct random inspections for compliance with this chapter and rules adopted pursuant to this chapter.

[2009, c. 369, Pt. B, §10 (NEW) .]

4. **Diseases.** The director may require the physical examination of any person offering service to members of the public who is suspected of having any communicable disease. A person who has a communicable disease may not give service to members of the public, including service within licensed establishments or schools licensed by the director. Failure to submit to such an examination is grounds for suspension or revocation of the person's registration, certification, permit or license.

[2009, c. 369, Pt. B, §10 (NEW) .]

SECTION HISTORY
2009, c. 369, Pt. B, §10 (NEW). 2011, c. 286, Pt. M, §10 (AMD).

§14213. REGISTER

(REPEALED)

SECTION HISTORY
1991, c. 397, §6 (NEW). 2007, c. 402, Pt. HH, §9 (RP).

§14214. DISPOSITION OF FEES

(REPEALED)

SECTION HISTORY
1991, c. 397, §6 (NEW). 1995, c. 397, §122 (RP).

Subchapter 3: LICENSURE HEADING: PL 1991, C. 397, §6 (NEW)

§14224. GENERAL PROVISIONS; LICENSES

1. **Practice; license required.** A person may not practice cosmetology, barbering, limited barbering, nail technology or aesthetics or act as a trainee in this State unless that person has first obtained a license as provided in this chapter.

[2011, c. 286, Pt. M, §11 (AMD) .]

2. **Operation of shop; license required.** A person, firm or corporation may not provide services in, operate or cause to be operated a shop where cosmetology, barbering, limited barbering, nail technology or aesthetics is practiced unless that shop has been duly licensed by the director. A license issued pursuant to this

subsection authorizes the operation of the establishment only at the location for which the license is issued. Operation of the establishment at any other location is unlawful unless a license for the new location has been obtained in compliance with this chapter and applicable rules.

The director shall furnish to each licensed cosmetologist, barber, limited barber, nail technician or aesthetician a license certifying that the holder of that license is entitled to practice in this State. The licensee shall post the license in a conspicuous place where it may be readily seen and read by all persons served. The reproduction, altering or defacing of any license is prohibited.

Booths attached to or within a licensed shop that are operated independently are subject to licensure, fees and applicable rules in the same manner as independent shops.

The exceptions listed in section 14203, subsection 3 do not permit the practice of cosmetology, barbering, limited barbering, nail technology or aesthetics in food establishments or food preparation areas.

[2011, c. 286, Pt. M, §12 (AMD) .]

2-A. **Operation of tanning device; public access.** An establishment in which a tanning device as that term is defined in rules adopted by the Department of Health and Human Services is operated on the effective date of this subsection is not required to partition off the working area of the establishment or maintain a separate entrance in order to provide public access to the tanning device. If such an establishment undergoes a material alteration or adds more tanning devices, then the establishment may be prohibited from providing public access to the tanning device through the working area.

[1995, c. 187, §2 (AMD); 2003, c. 689, Pt. B, §6 (REV) .]

2-B. **Change of ownership; change of location.** The owner of a new shop is required to apply to the director for licensure of that shop. The owner of a licensed shop that undergoes a change in location is required to reapply to the director for licensure. The owner or owners of a licensed shop that undergoes a change in ownership shall notify the director within 7 days of the change. If a shop has more than one owner and the change in ownership results from the death or divorce of one of the owners, the notice must be provided to the director as set forth in subsection 2-C. Whenever there is a change of ownership, the shop license is valid for 30 days from the transaction date to allow the new owner to comply with this section.

[2009, c. 369, Pt. B, §12 (AMD) .]

2-C. **Ownership changes resulting from death or divorce of an owner.** If a licensed shop has more than one owner and ownership changes as a result of the death or divorce of one of the owners, the director shall reissue the license for the remaining license period as long as a remaining owner is named on the existing license and the director is notified within 30 days of the divorce decree or the date of death. A shop license is valid for 60 days following the death of the person in whose name the shop is licensed.

[2009, c. 369, Pt. B, §13 (AMD) .]

2-D. **Special inspections.** A shop that requires a special inspection, such as a new shop or a shop that changes location or ownership, may be assessed a separate inspection fee.

[1997, c. 622, §2 (NEW) .]

3. **Trainee.** A trainee cosmetologist, barber, limited barber, nail technician or aesthetician licensed pursuant to section 14232 may not independently conduct a practice but may, as a trainee, do any or all acts constituting the practice under the immediate personal supervision of a person duly licensed and approved by the director in a licensed shop.

[2011, c. 286, Pt. M, §13 (AMD) .]

4. **Student.** A student studying the practice of cosmetology, barbering, limited barbering, nail technology, aesthetics or instructing must be enrolled in a school licensed by the director pursuant to section 14233.

[2011, c. 286, Pt. M, §14 (AMD) .]

A person who violates this section is subject to the provisions of section 14236-A and Title 10, section 8003-C. [2007, c. 402, Pt. HH, §10 (NEW).]

SECTION HISTORY
1991, c. 397, §6 (NEW). 1993, c. 630, §B15 (AMD). 1993, c. 659, §A14 (AMD). 1995, c. 187, §2 (AMD). 1997, c. 622, §§1,2 (AMD). 1999, c. 386, §U2 (AMD). 2003, c. 689, §B6 (REV). 2007, c. 402, Pt. HH, §10 (AMD). 2009, c. 369, Pt. B, §§11-15 (AMD). 2011, c. 286, Pt. M, §§11-14 (AMD).

§14225. SPECIAL MOBILE SHOP LICENSE

The director may, subject to section 14212-A, subsection 2, adopt rules authorizing the issuance of special mobile shop licenses, including requirements for mobile shops, locations for these shops and any other rules that the director considers necessary. The fee for a special mobile shop license is set under section 14238. [2009, c. 369, Pt. B, §16 (AMD).]

A special mobile shop license issued pursuant to this section must set out on the license the area in which that mobile shop is authorized to operate and any other special requirements or restrictions to which that license is subject. A separate license must be obtained for each municipality in which a mobile shop operates. [1991, c. 397, §6 (NEW).]

SECTION HISTORY
1991, c. 397, §6 (NEW). 2007, c. 402, Pt. HH, §11 (AMD). 2009, c. 369, Pt. B, §16 (AMD). 2011, c. 286, Pt. M, §15 (AMD).

§14226. QUALIFICATIONS; COSMETOLOGY

A person is eligible to obtain a license under this chapter for the practice of cosmetology if that person: [1991, c. 397, §6 (NEW).]

1. **Age.** Is at least 17 years of age;

[1991, c. 397, §6 (NEW) .]

2. **Education.** Has satisfactorily completed the 10th grade in a secondary school or its equivalent;

[1991, c. 397, §6 (NEW) .]

3. **Training.** Has satisfactorily completed a course of instruction in cosmetology of 1,500 hours in not less than 9 months in a school licensed by the director or has experience in the practice of cosmetology as a trainee of 2,500 hours distributed over a period of at least 18 months; and

[2009, c. 369, Pt. B, §17 (AMD) .]

4. **Examination.** Has passed an approved examination.

A. [1997, c. 210, §25 (RP).]

B. [2011, c. 286, Pt. M, §16 (RP).]

[2011, c. 286, Pt. M, §16 (AMD) .]

SECTION HISTORY
1991, c. 397, §6 (NEW). 1993, c. 630, §§B16,17 (AMD). 1997, c. 210, §§24,27 (AMD). 2007, c. 402, Pt. HH, §12 (AMD). 2009, c. 369, Pt. B, §§17-19 (AMD). 2011, c. 286, Pt. M, §§16, 17 (AMD).

§14227. QUALIFICATIONS; BARBERING

A person is eligible to obtain a license under this chapter for the practice of barbering if that person: [1991, c. 397, §6 (NEW).]

1. **Age.** Is at least 17 years of age;

[1991, c. 397, §6 (NEW) .]

2. **Education.** Has satisfactorily completed the 10th grade in a secondary school or its equivalent;

[1991, c. 397, §6 (NEW) .]

3. **Training.** Has satisfactorily completed a course of instruction in barbering of 1,500 hours in not less than 9 months in a school licensed by the director or has experience in the practice of barbering as a trainee of 2,500 hours distributed over a period of at least 18 months; and

[2009, c. 369, Pt. B, §20 (AMD) .]

4. **Examination.** Has passed an approved examination.

A. [1997, c. 210, §29 (RP).]

B. [2011, c. 286, Pt. M, §18 (RP).]

[2011, c. 286, Pt. M, §18 (AMD) .]

SECTION HISTORY
1991, c. 397, §6 (NEW). 1993, c. 630, §§B18,19 (AMD). 1997, c. 210, §§28-31 (AMD). 2007, c. 402, Pt. HH, §13 (AMD). 2009, c. 369, Pt. B, §§20-22 (AMD). 2011, c. 286, Pt. M, §§18, 19 (AMD).

§14227-A. QUALIFICATIONS; LIMITED BARBERING

A person is eligible to obtain a license under this chapter for the practice of limited barbering if that person: [2011, c. 286, Pt. M, §20 (NEW).]

1. **Age.** Is at least 17 years of age;

[2011, c. 286, Pt. M, §20 (NEW) .]

2. **Education.** Has satisfactorily completed the 10th grade in a secondary school or its equivalent;

[2011, c. 286, Pt. M, §20 (NEW) .]

3. **Training.** Has satisfactorily completed a course of instruction in the practice of limited barbering of 800 hours in not less than 5 months in a school licensed by the director or has experience in the practice of limited barbering as a trainee of 1,600 hours distributed over a period of at least 10 months; and

[2011, c. 286, Pt. M, §20 (NEW) .]

4. **Examination.** Has passed an approved examination.

[2011, c. 286, Pt. M, §20 (NEW) .]

SECTION HISTORY
2011, c. 286, Pt. M, §20 (NEW).

§14228. QUALIFICATIONS; AESTHETICS

A person is eligible to obtain a license under this chapter for the practice of aesthetics if that person: [1991, c. 397, §6 (NEW).]

1. **Age.** Is at least 17 years of age;

[1991, c. 397, §6 (NEW) .]

2. **Education.** Has satisfactorily completed the 10th grade in a secondary school or its equivalent;

[1991, c. 397, §6 (NEW) .]

3. **Training.** Has satisfactorily completed a course of instruction in aesthetics of 600 hours in not less than 3 months in a school licensed by the director or has experience in the practice of aesthetics as a trainee of up to 1,000 hours distributed over a period of at least 6 months. The specific number of hours of course work required up to a maximum of 600 hours must be specified by rule. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A; and

[2009, c. 369, Pt. B, §23 (AMD) .]

4. **Examination.** Has passed an approved examination.

A. [1997, c. 210, §33 (RP).]

B. [2011, c. 286, Pt. M, §21 (RP).]

[2011, c. 286, Pt. M, §21 (AMD) .]

SECTION HISTORY
1991, c. 397, §6 (NEW). 1993, c. 630, §B20 (AMD). 1997, c. 210, §§32-34 (AMD). 1999, c. 386, §U3 (AMD). 2001, c. 260, §G1 (AMD). 2007, c. 402, Pt. HH, §14 (AMD). 2009, c. 369, Pt. B, §§23, 24 (AMD). 2011, c. 286, Pt. M, §21 (AMD).

§14229. QUALIFICATIONS; NAIL TECHNOLOGY

A person is eligible to obtain a license under this chapter for the practice of nail technology if that person: [2011, c. 286, Pt. M, §22 (AMD).]

1. **Age.** Is at least 17 years of age;

[1991, c. 397, §6 (NEW) .]

2. **Education.** Has satisfactorily completed the 10th grade in a secondary school or its equivalent;

[1991, c. 397, §6 (NEW) .]

3. **Training.** Has satisfactorily completed a course of instruction in nail technology of 200 hours in not less than 5 weeks in a school licensed by the director or has experience in the practice of nail technology as a trainee of 400 hours distributed over a period of at least 10 weeks; and

[2011, c. 286, Pt. M, §22 (AMD) .]

4. **Examination.** Has passed an approved examination.

A. [1997, c. 210, §36 (RP).]

B. [2011, c. 286, Pt. M, §22 (RP).]

[2011, c. 286, Pt. M, §22 (AMD) .]

SECTION HISTORY
1991, c. 397, §6 (NEW). 1993, c. 630, §B21 (AMD). 1997, c. 210, §§35-37 (AMD). 2007, c. 402, Pt. HH, §15 (AMD). 2009, c. 369, Pt. B, §§25, 26 (AMD). 2011, c. 286, Pt. M, §22 (AMD).

§14229-A. FIRST LICENSE; REEXAMINATION

Within one year of notification of passing an examination, the applicant must pay a fee as set under section 14238 to receive a first license; otherwise, the applicant must retake the full examination to apply for initial licensure. The first license is valid until the next renewal period. The director has the authority to waive the one-year time period for extenuating circumstances. [2011, c. 286, Pt. M, §23 (AMD).]

SECTION HISTORY
2007, c. 402, Pt. HH, §16 (NEW). 2009, c. 369, Pt. B, §27 (AMD). 2011, c. 286, Pt. M, §23 (AMD).

§14230. TEMPORARY LICENSE

If an applicant to practice cosmetology, barbering, limited barbering, nail technology or aesthetics qualifies for examination, the director may issue to that applicant a temporary license to practice under the direct supervision of a qualified supervisor, as determined by rules, within a licensed shop. The applicant must pay the fee as set under section 14238. A temporary license expires 6 months from the date of issuance and is not renewable. The applicant is not considered a trainee. [2011, c. 286, Pt. M, §24 (AMD).]

SECTION HISTORY
1991, c. 397, §6 (NEW). 1993, c. 630, §B22 (AMD). 1997, c. 210, §38 (AMD). 2007, c. 402, Pt. HH, §17 (AMD). 2009, c. 369, Pt. B, §28 (AMD). 2011, c. 286, Pt. M, §24 (AMD).

§14231. ENDORSEMENT; EXAMINATION ELIGIBILITY FOR OUT-OF-STATE APPLICANTS

The director may waive the examination and grant a license to any applicant who presents proof of being licensed to practice by another state or other jurisdiction of the United States or another country that maintains professional standards considered by the director to be equivalent to or higher than those set forth in this chapter, as long as no cause exists for denial of a license under section 14236-A. Such an applicant must pay the fee as provided in section 14238. [2011, c. 286, Pt. M, §25 (AMD).]

An applicant who does not hold a current license issued by another state or other jurisdiction of the United States or another country may qualify for examination if the applicant presents proof of having satisfactorily completed a course of instruction in a licensed school or approved experience as a trainee considered by the director to have standards equivalent to or higher than the standards for instruction or experience set forth by this chapter, as long as no cause exists for denial of a license under section 14236-A. The applicant must also comply with all other requirements to become licensed and must pay the fee provided in section 14238. [2011, c. 286, Pt. M, §25 (NEW).]

SECTION HISTORY
1991, c. 397, §6 (NEW). 1993, c. 287, §1 (AMD). 2007, c. 402, Pt. HH, §18 (AMD). 2009, c. 369, Pt. B, §29 (AMD). 2011, c. 286, Pt. M, §25 (AMD).

§14232. TRAINEES

1. **License.** Each trainee must submit an application for licensure to the director. The application must be accompanied by a fee as set under section 14238 and meet requirements as specified in rule. A trainee license may be renewed no more than 2 times and is subject to fees in accordance with section 14238. The director may grant an additional renewal upon a showing of extenuating circumstances.

A. [2011, c. 286, Pt. M, §26 (RP).]

B. [2011, c. 286, Pt. M, §26 (RP).]

C. [2011, c. 286, Pt. M, §26 (RP).]

D. [2011, c. 286, Pt. M, §26 (RP).]

[2011, c. 286, Pt. M, §26 (AMD) .]

2. **Filing with the director.** Before beginning training, a trainee must file with the director:

A. The employer's name, shop name and address; [1991, c. 397, §6 (NEW).]

B. The date that the training will begin; [1993, c. 630, Pt. B, §23 (AMD).]

C. The type of training, such as cosmetology, barbering, limited barbering, nail technology or aesthetics; [2011, c. 286, Pt. M, §26 (AMD).]

D. Evidence of age; [2007, c. 402, Pt. HH, §19 (AMD).]

E. Evidence of satisfactory completion of the 10th grade or its equivalent; and [2007, c. 402, Pt. HH, §19 (AMD).]

F. The name of the licensee who will directly supervise the trainee in compliance with section 14224, subsection 3. [2007, c. 402, Pt. HH, §19 (NEW).]

Trainees who change their place of employment must notify the director within 10 days of the change and must file a new trainee application.

[2011, c. 286, Pt. M, §26 (AMD) .]

3. **Courses of instruction.** A trainee may take courses of instruction in a licensed school. Hours or time accumulated in a school may be applied to the training program in accordance with rules adopted pursuant to this chapter.

[2011, c. 286, Pt. M, §26 (AMD) .]

4. **Renewal; display; examination.** The director shall furnish a trainee license to each trainee. A trainee license is renewable upon payment of the fee as set under section 14238. The license must be displayed as provided for licenses in section 14224. The term "trainee" must appear in conspicuous print on the license. To be licensed as a cosmetologist, barber, limited barber, aesthetician or nail technician, a trainee, upon completion of the required training in accordance with this chapter, must pass an approved examination.

[2011, c. 286, Pt. M, §26 (AMD) .]

SECTION HISTORY
1991, c. 397, §6 (NEW). 1993, c. 630, §B23 (AMD). 2007, c. 402, Pt. HH, §19 (AMD). 2009, c. 369, Pt. B, §30 (AMD). 2011, c. 286, Pt. M, §26 (AMD).

§14233. STUDENTS

Schools licensed by the director shall maintain and submit a roster of student enrollment and attrition in accordance with rules adopted by the director. [2011, c. 286, Pt. M, §27 (AMD).]

To be eligible for enrollment, the student must be at least 16 years of age and have satisfactorily completed the 10th grade or its equivalent. Evidence of the student's eligibility and enrollment in the school must be maintained by the school and presented to the director or a designee of the director as required by rule and upon request. [2011, c. 286, Pt. M, §27 (AMD).]

All training or services rendered to a member of the public by a student must be under the direct supervision of a duly licensed instructor in a licensed school or as otherwise provided by rule. [2011, c. 286, Pt. M, §27 (AMD).]

SECTION HISTORY
1991, c. 397, §6 (NEW). 1997, c. 210, §39 (AMD). 1999, c. 386, §U4 (AMD). 2007, c. 402, Pt. HH, §20 (AMD). 2009, c. 369, Pt. B, §31 (AMD). 2011, c. 286, Pt. M, §27 (AMD).

§14234. DEMONSTRATORS

A person may not perform demonstrations unless licensed by the director and upon payment of the fee as set under section 14238. The director shall adopt rules that describe the articles, machines or techniques that may be demonstrated outside the licensed establishment. All demonstrations must be performed in a safe and sanitary manner for the protection of the public. Licenses must be renewed biennially or at such other times as the commissioner may designate. A license is not required for persons who perform demonstrations in a licensed establishment or solely to licensed persons. [2009, c. 369, Pt. B, §32 (AMD).]

SECTION HISTORY
1991, c. 397, §6 (NEW). 1995, c. 80, §2 (RPR). 2007, c. 402, Pt. HH, §21 (AMD). 2009, c. 369, Pt. B, §32 (AMD).

§14235. LICENSES; RENEWAL

Licensees must renew their licenses annually by filing an application and paying the renewal fee as set under section 14238. The expiration dates for licenses issued under this chapter may be established by the commissioner. [2011, c. 286, Pt. M, §28 (AMD).]

A license may be renewed up to 90 days after the date of its expiration upon payment of a late fee as set under section 14238 in addition to the renewal fee. Any person who submits an application for renewal more than 90 days after the license expiration date is subject to all requirements governing new applicants under

this chapter, including a late fee, renewal fee and additional late fee as set under section 14238, except that the director, after giving due consideration to the protection of the public, may waive requirements. [2009, c. 369, Pt. B, §33 (AMD).]

Notwithstanding any other provision of this chapter, the director must waive examination if a renewal application is made by a person within 90 days after separation from the United States Armed Forces, under conditions other than dishonorable, if that person failed to renew a license because of active duty in the armed forces. The waiver of examination may not be granted if the person served more than 4 years in the armed forces, unless evidence is presented to demonstrate that the applicant was required by law to serve that period. [2009, c. 369, Pt. B, §33 (AMD).]

SECTION HISTORY
1991, c. 397, §6 (NEW). 2007, c. 402, Pt. HH, §22 (AMD). 2009, c. 369, Pt. B, §33 (AMD). 2011, c. 286, Pt. M, §28 (AMD).

§14235-A. LICENSES; INITIAL

An applicant for initial licensure must submit an application together with the fee set under section 14238 and meet the requirements set forth under this chapter. [2009, c. 369, Pt. B, §34 (NEW).]

SECTION HISTORY
2009, c. 369, Pt. B, §34 (NEW).

§14236. INVESTIGATION OF COMPLAINTS; SUSPENSION, REVOCATION AND REFUSAL TO ISSUE OR RENEW

(REPEALED)

SECTION HISTORY
1991, c. 397, §6 (NEW). 2007, c. 402, Pt. HH, §23 (RP).

§14236-A. DENIAL OR REFUSAL TO RENEW LICENSE; DISCIPLINARY ACTION

1. **Disciplinary action.** In addition to the grounds enumerated in Title 10, section 8003, subsection 5-A, paragraph A, the director may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A for:

A. Addiction, as confirmed by professional diagnosis, to the use of alcohol or other drugs that has resulted or may result in the licensee's being unable to perform duties or being unable to perform those duties in a manner that would not endanger the health or safety of the public to be served; [2007, c. 402, Pt. HH, §24 (NEW).]

B. A professional diagnosis of mental incompetence; [2007, c. 402, Pt. HH, §24 (NEW).]

C. Engaging in false, misleading or deceptive advertising; [2007, c. 402, Pt. HH, §24 (NEW).]

D. Employing a person to practice cosmetology, barbering, limited barbering, nail technology or aesthetics who does not hold a valid license, unless that person is a trainee within the meaning of this chapter; or [2011, c. 286, Pt. M, §29 (AMD).]

E. Any negligence or misconduct in any of the practices licensed under this chapter. [2007, c. 402, Pt. HH, §24 (NEW).]

[2011, c. 286, Pt. M, §29 (AMD) .]

2. **Reinstatement.**

[2009, c. 369, Pt. B, §35 (RP) .]

SECTION HISTORY
2007, c. 402, Pt. HH, §24 (NEW). 2009, c. 369, Pt. B, §35 (AMD). 2011, c. 286, Pt. M, §29 (AMD).

§14237. ENFORCEMENT AND DISCIPLINARY PROCEDURES

(REPEALED)

SECTION HISTORY
1991, c. 397, §6 (NEW). 2007, c. 402, Pt. HH, §25 (RP).

§14238. FEES

The Director of the Office of Professional and Occupational Regulation within the department may establish by rule fees for purposes authorized under this chapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for licensure of a school may not exceed $500 and the fee for any other purpose may not exceed $100. Rules adopted pursuant to the section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [2007, c. 402, Pt. HH, §26 (NEW); 2011, c. 286, Pt. B, §5 (REV).]

SECTION HISTORY
1991, c. 397, §6 (NEW). 1993, c. 630, §B24 (AMD). 1995, c. 397, §123 (AMD). 1997, c. 622, §§3,4 (AMD). 1999, c. 386, §U5 (AMD). 2007, c. 402, Pt. HH, §26 (RPR). 2011, c. 286, Pt. B, §5 (REV).

Subchapter 4: REGULATION OF SCHOOLS
HEADING: PL 1997, C. 266, §18 (NEW)

§14245. LICENSE REQUIRED; PENALTIES

1. **Requirement of license.** Any person, partnership, association or corporation located either within or outside the State must obtain a license as specified under section 14246 before:

A. Operating, maintaining or instructing at a school within the State; or [2007, c. 402, Pt. HH, §27 (NEW).]

B. Collecting any tuition, fee or other charge for education, instruction or other services provided or to be provided by a school. [2007, c. 402, Pt. HH, §27 (NEW).]

[2009, c. 369, Pt. B, §36 (AMD) .]

2. **Unlicensed practice.** Any person, partnership, association or corporation that violates subsection 1 is subject to the provisions of Title 10, section 8003-C, except that, notwithstanding Title 10, section 8003-C, such a person, partnership, association or corporation is subject to a fine of not less than $100 but not more than $5,000 for each violation.

[2007, c. 402, Pt. HH, §27 (AMD) .]

3. **Enforcement actions.**

[1997, c. 771, §10 (RP) .]

SECTION HISTORY
1997, c. 266, §18 (NEW). 1997, c. 771, §10 (AMD). 2007, c. 402, Pt. HH, §27 (AMD). 2009, c. 369, Pt. B, §36 (AMD).

§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 accompanied by an application fee as set under section 14238 and a surety bond. 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 director. 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 a period of 12 months from the date of issuance or as otherwise determined by the commissioner. [2007, c. 402, Pt. HH, §28 (AMD).]

B. The bond must be continuous and must provide indemnification to any student suffering loss as a result of any fraud, 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 director in the event of cancellation. Cancellation of the bond by the surety, or payment under the bond by the surety to the director 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. [2009, c. 369, Pt. B, §37 (AMD).]

C. If one or more students notify the director 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 director 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 director. The director 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. [2009, c. 369, Pt. B, §37 (AMD).]

[2009, c. 369, Pt. B, §37 (AMD) .]

2. **License fee; renewal fee; renewal requirements.** A fee as set under section 14238 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 director shall provide copies of the audit or financial statements and, in cases in which the bond is not in favor of the director, 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 [1997, c. 771, §11 (NEW).]

B. The school is in compliance with all applicable federal and state laws and regulations. [1997, c. 771, §11 (NEW).]

[2009, c. 369, Pt. B, §38 (AMD) .]

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.

[1997, c. 771, §11 (NEW) .]

SECTION HISTORY
1997, c. 266, §18 (NEW). 1997, c. 771, §11 (AMD). 2007, c. 402, Pt. HH, §§28, 29 (AMD). 2009, c. 369, Pt. B, §§37, 38 (AMD).

§14247. RULES

(REPEALED)

SECTION HISTORY
1997, c. 266, §18 (NEW). 1997, c. 771, §12 (AMD). 2007, c. 402, Pt. HH, §30 (AMD). 2009, c. 369, Pt. B, §39 (RP).

§14248. ON-SITE EVALUATIONS

The director shall conduct biennial on-site evaluations of schools to ensure compliance with this subchapter and applicable rules. The expense of the on-site evaluation must be borne by the school examined. [2009, c. 369, Pt. B, §40 (AMD).]

SECTION HISTORY
1997, c. 266, §18 (NEW). 2009, c. 369, Pt. B, §40 (AMD).

§14249. COMPLAINTS

The director may investigate complaints involving a school including any allegation of noncompliance with or violation of this subchapter and applicable rules. The director 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 4, the director may amend or modify any license and may suspend or refuse to renew a license as provided in Title 5, section 10004. [2009, c. 369, Pt. B, §41 (AMD).]

SECTION HISTORY
1997, c. 266, §18 (NEW). 1997, c. 771, §13 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 402, Pt. HH, §31 (AMD). 2009, c. 369, Pt. B, §41 (AMD).

§14250. DENIAL OR REFUSAL TO RENEW SCHOOL LICENSE; DISCIPLINARY ACTION

The director may deny a school license, refuse to renew a school license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A for any of the reasons enumerated in Title 10, section 8003, subsection 5-A, paragraph A. [2009, c. 369, Pt. B, §42 (AMD).]

SECTION HISTORY
1997, c. 266, §18 (NEW). 2007, c. 402, Pt. HH, §32 (RPR). 2009, c. 369, Pt. B, §42 (AMD).

§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 District 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. [1997, c. 771, §14 (NEW); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF).]

SECTION HISTORY
1997, c. 771, §14 (NEW). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF).

§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. [1997, c. 771, §14 (NEW).]

SECTION HISTORY
1997, c. 771, §14 (NEW).

Chapter 127: MASSAGE THERAPISTS

§14301. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1991, c. 403, §1 (NEW).]

1. **Commissioner.** "Commissioner" means Commissioner of Professional and Financial Regulation.

[1991, c. 403, §1 (NEW) .]

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

[1991, c. 403, §1 (NEW) .]

3. **Massage therapist or massage practitioner.** "Massage therapist" or "massage practitioner" means a person who provides or offers to provide massage therapy for a fee, monetary or otherwise.

[1997, c. 681, §1 (AMD) .]

4. **Massage therapy.** "Massage therapy" means a scientific or skillful manipulation of soft tissue for therapeutic or remedial purposes, specifically for improving muscle tone and circulation and promoting health and physical well-being. The term includes, but is not limited to, manual and mechanical procedures for the purpose of treating soft tissue only, the use of supplementary aids such as rubbing alcohol, liniments, oils, antiseptics, powders, herbal preparations, creams or lotions, procedures such as oil rubs, salt glows and hot or cold packs or other similar procedures or preparations commonly used in this practice. This term specifically excludes manipulation of the spine or articulations and excludes sexual contact as defined in Title 17-A, section 251, subsection 1, paragraph D.

[1991, c. 548, Pt. E, (AMD) .]

SECTION HISTORY
1991, c. 403, §1 (NEW). 1991, c. 548, §E (AMD). 1993, c. 245, §1 (AMD). 1997, c. 681, §1 (AMD).

§14302. COMMISSIONER; POWERS AND DUTIES

The commissioner or the commissioner's designee has the following powers and duties in addition to all other powers and duties set forth in this chapter. [1991, c. 403, §1 (NEW).]

1. **Standards.** The commissioner shall administer and enforce this chapter.

[1991, c. 403, §1 (NEW) .]

2. **Rules.** The commissioner shall adopt rules in accordance with the Maine Administrative Procedure Act necessary to carry out the purposes of this chapter.

[1991, c. 403, §1 (NEW) .]

3. **Complaints.**

[2007, c. 402, Pt. II, §1 (RP) .]

4. Contracts.

[2007, c. 402, Pt. II, §2 (RP) .]

5. Register.

[2007, c. 402, Pt. II, §3 (RP) .]

6. Hearings.

[2007, c. 402, Pt. II, §4 (RP) .]

7. Advisory council.

[2005, c. 294, §25 (RP) .]

SECTION HISTORY
1991, c. 403, §1 (NEW). 1993, c. 245, §2 (AMD). 1997, c. 681, §§2,3 (AMD). 2005, c. 294, §25 (AMD). 2007, c. 402, Pt. II, §§1-4 (AMD).

§14303. EMPLOYEES

(REPEALED)

SECTION HISTORY
1991, c. 403, §1 (NEW). 1995, c. 397, §124 (RP).

§14304. REGISTRATION

(REPEALED)

SECTION HISTORY
1991, c. 403, §1 (NEW). 1993, c. 245, §3 (AMD). 1997, c. 681, §4 (RP).

§14305. REQUIREMENTS FOR REGISTRATION

(REPEALED)

SECTION HISTORY
1991, c. 403, §1 (NEW). 1993, c. 245, §§4,5 (AMD). 1997, c. 681, §5 (RP).

§14306. REGISTRATION NOT ALLOWED

(REPEALED)

SECTION HISTORY
1991, c. 403, §1 (NEW). 1993, c. 245, §6 (RP).

§14306-A. CERTIFICATION

(REPEALED)

SECTION HISTORY
1993, c. 245, §7 (NEW). 1997, c. 681, §6 (RP).

§14306-B. REQUIREMENTS FOR CERTIFICATION

(REPEALED)

SECTION HISTORY
1993, c. 245, §7 (NEW). 1997, c. 681, §6 (RP).

§14306-C. LICENSING

1. **License required.** Beginning on the effective date of this section, a person may not, unless specifically exempted by this chapter, claim to be a massage therapist or a massage practitioner unless licensed in accordance with this chapter.

[1997, c. 681, §7 (NEW) .]

2. **Individual licensing.** Only an individual who is qualified under this chapter may be issued a license to practice massage therapy.

[1997, c. 681, §7 (NEW) .]

SECTION HISTORY
1997, c. 681, §7 (NEW).

§14306-D. QUALIFICATIONS; MASSAGE THERAPISTS

Each applicant for licensure must demonstrate competence to engage in the practice of massage therapy in a manner that safeguards the interests of the public. [1997, c. 681, §7 (NEW).]

1. **Requirements.** The following requirements are considered minimum evidence satisfactory to the department that an applicant is qualified for licensure under this chapter. An applicant must:

A. Pass the examination sponsored by the National Certification Board for Therapeutic Massage and Bodywork or the Federation of State Massage Therapy Boards or their successor or other organizations approved by the department; or demonstrate completion of a course of training consisting of 500 or more hours approved by the department; [2007, c. 402, Pt. II, §5 (AMD).]

B. Be 18 years of age or older; [1997, c. 681, §7 (NEW).]

C. Possess a high school diploma or its equivalent; and [2007, c. 402, Pt. II, §5 (AMD).]

D. [2007, c. 402, Pt. II, §5 (RP).]

E. Pay an application fee and an annual licensing fee as set under section 14306-G. [2007, c. 402, Pt. II, §5 (AMD).]

[2007, c. 402, Pt. II, §5 (AMD) .]

2. **Existing certified massage therapists.**

[2007, c. 402, Pt. II, §5 (RP) .]

SECTION HISTORY
1997, c. 681, §7 (NEW). 2001, c. 323, §31 (AMD). 2007, c. 402, Pt. II, §5 (AMD).

§14306-E. REQUIREMENTS FOR LICENSURE; REGISTERED MASSAGE PRACTITIONERS

(REPEALED)

SECTION HISTORY
1997, c. 681, §7 (NEW). 2001, c. 323, §32 (AMD). 2007, c. 402, Pt. II, §6 (RP).

§14306-F. TERMS OF LICENSE

1. **Renewal.** A license renewal fee as set under section 14306-G must be paid by the licensee. Licenses issued under this chapter expire annually on their anniversary date or as otherwise provided by the commissioner. Any license not renewed by its date of expiration automatically expires. Licenses may be renewed up to 90 days after the date of expiration upon payment of a late fee in addition to the renewal fee as set under section 14306-G. Any person who submits an application for renewal more than 90 days after the renewal date is subject to all requirements governing new applicants under this chapter, except that the commissioner may, giving due consideration to the protection of the public, waive examination if the renewal application is received, together with the late fee and renewal fee, within 2 years from the date of the expiration.

[2011, c. 286, Pt. N, §1 (AMD) .]

2. **Continuing education and supervision.** The department, by rule, may establish continuing education and supervision requirements. An applicant for a renewal of a license must show proof of satisfying the continuing education requirements set forth by the department. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

[1997, c. 681, §7 (NEW) .]

SECTION HISTORY
1997, c. 681, §7 (NEW). 2001, c. 323, §33 (AMD). 2007, c. 402, Pt. II, §7 (AMD). 2011, c. 286, Pt. N, §1 (AMD).

§14306-G. FEES

The Director of the Office of Professional and Occupational Regulation within the Department of Professional and Financial Regulation may establish by rule fees for purposes authorized under this chapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for any one purpose may not exceed $100 annually. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter II-A. [2001, c. 323, §34 (NEW); 2011, c. 286, Pt. B, §5 (REV).]

SECTION HISTORY
2001, c. 323, §34 (NEW). 2011, c. 286, Pt. B, §5 (REV).

§14307. EXEMPTIONS TO REGISTRATION OR CERTIFICATION

1. **Other professionals.** This chapter does not apply to the activities or services of members of other professions licensed, certified or registered by the State, including, but not limited to, physicians, chiropractors, physical therapists, cosmetologists or registered nurses performing soft tissue manipulation consistent with the laws of the State governing their practices, provided they do not use the title "massage therapist" or "massage practitioner."

[1993, c. 245, §8 (AMD) .]

2. **Other exemptions.** This chapter does not apply to the activities and services of individuals who practice other forms of tissue work exclusive of massage therapy, such as rolfing, Trager, reflexology, Shiatsu, Reiki and polarity, if those practitioners do not use the title "massage therapist" or "massage practitioner," unless they choose to meet the requirements of this chapter.

[1993, c. 245, §8 (AMD) .]

SECTION HISTORY
1991, c. 403, §1 (NEW). 1993, c. 245, §8 (AMD).

§14308. DISCIPLINARY ACTION; GROUNDS; PROCEDURE; COMPLAINTS *(REPEALED)*

SECTION HISTORY
1991, c. 403, §1 (NEW). 1993, c. 245, §8 (AMD). 1993, c. 600, §A278 (AMD). RR 1997, c. 2, §56 (COR). 1997, c. 681, §8 (AMD). 2007, c. 402, Pt. II, §8 (RP).

§14308-A. DENIAL OR REFUSAL TO RENEW LICENSE; DISCIPLINARY ACTION

In addition to the grounds enumerated in Title 10, section 8003, subsection 5-A, paragraph A, the commissioner may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A for: [2007, c. 402, Pt. II, §9 (NEW).]

1. **Habitual substance abuse.** Habitual substance abuse that has resulted or is forseeably likely to result in the applicant's or licensee's performing services in a manner that endangers the health or safety of clients;

[2007, c. 402, Pt. II, §9 (NEW) .]

2. **Mental incompetence.** A current medical finding of mental incompetence that affects the applicant's or licensee's ability to perform that person's occupation in a healthy and safe manner; or

[2007, c. 402, Pt. II, §9 (NEW) .]

3. **Revocation or denial.** Revocation in any state of a professional or occupational license, certification or registration for disciplinary reasons or rejection of any application for reasons related to untrustworthiness, within 3 years of the date of application.

[2007, c. 402, Pt. II, §9 (NEW) .]

SECTION HISTORY
2007, c. 402, Pt. II, §9 (NEW).

§14309. UNLICENSED PRACTICE

A person who violates section 14306-C is subject to the provisions of Title 10, section 8003-C. [2007, c. 402, Pt. II, §10 (AMD).]

SECTION HISTORY
1991, c. 403, §1 (NEW). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2001, c. 421, §B105 (AMD). 2001, c. 421, §C1 (AFF). 2007, c. 402, Pt. II, §10 (AMD).

§14310. HOME RULE

Nothing in this chapter prohibits a municipality from adopting or enforcing an ordinance that regulates massage, massage practitioners or massage therapists. If a municipality adopts such an ordinance, an individual must comply with the provisions of this chapter and any provision of the local ordinance that is more restrictive than this chapter. [1993, c. 245, §9 (AMD).]

SECTION HISTORY
1991, c. 403, §1 (NEW). 1993, c. 245, §9 (AMD).

§14311. RECIPROCITY

(REPEALED)

SECTION HISTORY
1993, c. 245, §10 (NEW). 2007, c. 402, Pt. II, §11 (RP).

Chapter 127-A: ATHLETIC TRAINERS

§14351. PURPOSE

The Legislature finds that the practice of athletic training affects the public health, safety and welfare and is subject to regulation in the public interest. The purpose of this chapter is to protect the public from unlicensed persons professing to be "athletic trainers" and from unprofessional conduct by persons licensed to use the term "athletic trainer." [2007, c. 402, Pt. JJ, §1 (AMD).]

SECTION HISTORY
1995, c. 275, §1 (NEW). 2007, c. 402, Pt. JJ, §1 (AMD).

§14352. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1995, c. 275, §1 (NEW).]

1. **Athlete.** "Athlete" means a physically active individual training for or participating in an amateur, educational or professional athletic organization or any other association that sponsors athletic programs or events in the State.

[1995, c. 275, §1 (NEW) .]

2. **Athletic injury.** "Athletic injury" means a disruption of tissue continuity that is sustained by an athlete or recreational athlete when that injury:

A. Results from that individual's participation in or training for sports, fitness training or other athletic competition; or [1995, c. 275, §1 (NEW).]

B. Restricts or prevents that individual from participation in those activities. [1995, c. 275, §1 (NEW).]

[1995, c. 275, §1 (NEW) .]

3. **Athletic trainer.** "Athletic trainer" means a person licensed by the department to use that title after meeting the requirements of this chapter.

[1995, c. 275, §1 (NEW) .]

4. **Athletic training.** "Athletic training" means:

A. Prevention of athletic injuries; [1995, c. 275, §1 (NEW).]

B. Recognition and evaluation of athletic injuries; [1995, c. 275, §1 (NEW).]

C. Management, treatment and disposition of athletic injuries; [1995, c. 275, §1 (NEW).]

D. Rehabilitation of athletic injuries; [1995, c. 275, §1 (NEW).]

E. Organization and administration of an athletic training program; and [1995, c. 275, §1 (NEW).]

F. Education and counseling of athletes, recreational athletes, coaches, family members, medical personnel and communities in the area of care and prevention of athletic injuries. [1995, c. 275, §1 (NEW).]

[1995, c. 275, §1 (NEW) .]

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

[1995, c. 275, §1 (NEW) .]

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

[1995, c. 275, §1 (NEW) .]

7. **Recreational athlete.** "Recreational athlete" means an individual participating in fitness training and conditioning, sports or other athletic competition, practices or events requiring physical strength, agility, flexibility, range of motion, speed or stamina and who is not affiliated with an amateur, educational or professional athletic organization or any association that sponsors athletic programs or events in the State.

[1995, c. 275, §1 (NEW) .]

SECTION HISTORY
1995, c. 275, §1 (NEW).

§14353. COMMISSIONER; POWERS AND DUTIES

The commissioner or the commissioner's designee has the following powers and duties in addition to all other powers and duties set forth in this chapter. [1995, c. 275, §1 (NEW).]

1. **Standards.** The commissioner shall administer and enforce the standards under this chapter.

[1995, c. 275, §1 (NEW) .]

2. **Rules.** The commissioner shall adopt rules in accordance with the Maine Administrative Procedure Act necessary to carry out the purposes of this chapter.

[1995, c. 275, §1 (NEW) .]

3. **Complaints.**

[2007, c. 402, Pt. JJ, §2 (RP) .]

4. **Contracts.**

[2007, c. 402, Pt. JJ, §2 (RP) .]

5. **Hearings.**

[2007, c. 402, Pt. JJ, §2 (RP) .]

6. **Advisory council.** The commissioner shall select members of the athletic training community to serve on an advisory council and to consult with the commissioner concerning the regulation of athletic trainers. The council may submit recommendations to the department concerning any matter and the department may consider the recommendations in making its decisions. Membership on the council is not a conflict of interest regardless of the occupations or associations of the members.

[2007, c. 402, Pt. JJ, §2 (AMD) .]

7. **Employees.**

[2007, c. 402, Pt. JJ, §2 (RP) .]

8. **Budget.**

[2007, c. 402, Pt. JJ, §2 (RP) .]

SECTION HISTORY
1995, c. 275, §1 (NEW). 2007, c. 402, Pt. JJ, §2 (AMD).

§14354. NECESSITY FOR LICENSURE

Beginning January 1, 1996 a person may not profess to be an athletic trainer or use the title "athletic trainer" alone or in connection with other words or the initials "AT" alone or in connection with other initials, whether or not compensation is received, unless licensed in accordance with this chapter. [1995, c. 275, §1 (NEW).]

1. **Athletic training.** When providing athletic training to an athlete without referral from a doctor of medicine, osteopathy, podiatry or dentistry, the athletic trainer is subject to the following requirements.

A. An athletic trainer may not make a medical diagnosis. The athletic trainer shall refer to a licensed doctor of medicine, osteopathy, podiatry or dentistry an athlete whose physical condition, either at the initial evaluation or during subsequent treatment, the athletic trainer determines to be beyond the scope of the practice of the athletic trainer. [1995, c. 275, §1 (NEW).]

B. If there is no improvement in an athlete who has sustained an athletic injury within 15 days of initiation of treatment, the athletic trainer shall refer the athlete to a licensed doctor of medicine, osteopathy, podiatry or dentistry or a licensed physical therapist. [1995, c. 275, §1 (NEW).]

C. If an athletic injury requires treatment for more than 45 days, the athletic trainer shall consult with, or refer the athlete to, a licensed doctor of medicine, surgery, osteopathy, podiatry or dentistry or a licensed physical therapist. The athletic trainer shall document the action taken. [1995, c. 275, §1 (NEW).]

[1995, c. 275, §1 (NEW) .]

2. **Training of recreational athlete.** When providing athletic training to the recreational athlete, for other than emergency care or the care of minor sprains, strains and contusions, the athletic trainer shall refer the athlete to a doctor of medicine, osteopathy, podiatry or dentistry or a licensed physical therapist.

For the treatment of the recreational athlete, for other than emergency care or the care of minor sprains, strains and contusions, the athletic trainer must receive referral from a doctor of medicine, osteopathy, podiatry or dentistry or a licensed physical therapist.

When providing care and treatment to the recreational athlete sustaining minor sprains, strains and contusions, the athletic trainer is subject to the following requirements.

A. An athletic trainer may not make a medical diagnosis. The athletic trainer shall refer to a licensed doctor of medicine, osteopathy, podiatry or dentistry an athlete whose physical condition, either at the initial evaluation or during subsequent treatment, the athletic trainer determines to be beyond the scope of practice of the athletic trainer. [1995, c. 275, §1 (NEW).]

B. If there is no improvement in a recreational athlete who has sustained an athletic injury within 15 days of initiation of treatment, the athletic trainer shall refer the recreational athlete to a licensed doctor of medicine, osteopathy, podiatry or dentistry or a licensed physical therapist. [1995, c. 275, §1 (NEW).]

C. If an athletic injury requires treatment for more than 45 days, the athletic trainer shall consult with or refer the recreational athlete to a licensed doctor of medicine, osteopathy, podiatry or dentistry or a licensed physical therapist. [1995, c. 275, §1 (NEW).]

[1995, c. 275, §1 (NEW) .]

SECTION HISTORY
1995, c. 275, §1 (NEW).

§14355. LICENSE VIOLATIONS

A person who violates section 14354 is subject to the provisions of Title 10, section 8003-C. [2007, c. 402, Pt. JJ, §3 (AMD).]

SECTION HISTORY
1995, c. 275, §1 (NEW). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 402, Pt. JJ, §3 (AMD).

§14356. EXEMPTIONS

Nothing in this chapter prevents or restricts the practice, services or activities of: [1995, c. 275, §1 (NEW).]

1. **Federal employee.** A person employed as an athletic trainer by the Federal Government or any federal agency if that person provides athletic training under the direction or control of that person's employing organization;

[1995, c. 275, §1 (NEW) .]

2. **Student athletic trainer.** A person fulfilling the requirements for licensure or pursuing a supervised course of study leading to a degree or certificate in athletic training at an accredited or approved educational program if the person is designated by a title that indicates that person's status as a student or trainee;

[1995, c. 275, §1 (NEW) .]

3. **Experience requirement.** A person fulfilling the supervised practical training requirements of this chapter if that training is necessary to meet the requirements of this chapter; or

[1995, c. 275, §1 (NEW) .]

4. **Visiting team.** A person performing athletic training services in the State for an out-of-state team that is in the State for competition at which an athletic trainer licensed under this chapter or a physician is available if these services are performed for no more than 4 days at a time or for no more than 30 days a year.

[1995, c. 275, §1 (NEW) .]

SECTION HISTORY
1995, c. 275, §1 (NEW).

§14357. QUALIFICATIONS FOR LICENSURE

1. **Qualifications.** To qualify for a license as an athletic trainer an applicant must:

A. Demonstrate that the applicant is trustworthy and competent to engage in practice as an athletic trainer in a manner that safeguards the interests of the public; [1995, c. 275, §1 (NEW).]

B. Be a graduate of a college or university approved by the department and have successfully completed that college's or university's curriculum in athletic training or other curricula acceptable to the department and have completed an athletic training education program approved by the National Athletic Trainers' Association or its successor or other organization approved by the department or a program of practical training in athletic training acceptable to the department; and [2007, c. 402, Pt. JJ, §4 (AMD).]

C. Have passed the National Athletic Trainers' Association Board of Certification examination or be currently certified by the National Athletic Trainers' Association or its successor or other organization approved by the department. [2007, c. 402, Pt. JJ, §5 (AMD).]

[2007, c. 402, Pt. JJ, §§4, 5 (AMD) .]

SECTION HISTORY
1995, c. 275, §1 (NEW). 2007, c. 402, Pt. JJ, §§4, 5 (AMD).

§14358. FEES

The Director of the Office of Professional and Occupational Regulation within the department may establish by rule fees for purposes authorized under this chapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for any one purpose may not exceed $300 annually. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [2007, c. 402, Pt. JJ, §6 (AMD); 2011, c. 286, Pt. B, §5 (REV).]

SECTION HISTORY
1995, c. 275, §1 (NEW). 1999, c. 685, §23 (AMD). 2007, c. 402, Pt. JJ, §6 (AMD). 2011, c. 286, Pt. B, §5 (REV).

§14359. RENEWAL

A license renewal fee as set under section 14358 must be paid by the licensee. Licenses issued under this chapter expire annually on their anniversary date or as otherwise provided by the commissioner. Any license not renewed by its date of expiration automatically expires. Licenses may be renewed up to 90 days after the date of expiration upon payment of a late fee in addition to the renewal fee as set under section 14358. A person who submits an application for renewal more than 90 days after the license expiration date is subject to all requirements governing new applicants under this chapter, except that the department may in its discretion, giving consideration to the protection of the public, waive examination if the renewal application is received, together with the late fee and renewal fee, within 2 years from the date of that expiration. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [2007, c. 402, Pt. JJ, §7 (AMD).]

For the purposes of satisfying the continuing education requirements, each application for license renewal must include current certification by the National Athletic Trainers' Association or its successor or other organization approved by the department. [2007, c. 402, Pt. JJ, §7 (AMD).]

SECTION HISTORY
1995, c. 275, §1 (NEW). 1999, c. 685, §24 (AMD). 2007, c. 402, Pt. JJ, §7 (AMD).

§14360. TEMPORARY LICENSES

A temporary license may be granted to a person who has completed the education and experience requirements of this chapter and has submitted the license fee as set under section 14358. This license allows the person to use the title "student athletic trainer" when practicing under the direction of a licensed athletic

trainer. This license becomes invalid after 6 months or upon failure by the licensee of the National Athletic Trainers' Association Board of Certification examination, whichever event occurs first. The license may not be renewed. [2007, c. 402, Pt. JJ, §8 (AMD).]

SECTION HISTORY
1995, c. 275, §1 (NEW). 2007, c. 402, Pt. JJ, §8 (AMD).

§14361. REVOCATION AND REISSUANCE

(REPEALED)

SECTION HISTORY
1995, c. 275, §1 (NEW). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 402, Pt. JJ, §9 (RP).

§14361-A. DENIAL OR REFUSAL TO RENEW LICENSE; DISCIPLINARY ACTION

In addition to the grounds enumerated in Title 10, section 8003, subsection 5-A, paragraph A, the department may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A for: [2007, c. 402, Pt. JJ, §10 (NEW).]

1. **Addiction.** Addiction to alcohol or other drugs resulting in the licensed athletic trainer's inability to perform that trainer's duties safely and competently;

[2007, c. 402, Pt. JJ, §10 (NEW) .]

2. **Incompetency.** A court finding of mental incompetency;

[2007, c. 402, Pt. JJ, §10 (NEW) .]

3. **Accomplice.** Aiding a person not duly licensed as an athletic trainer in misrepresentation as an athletic trainer; or

[2007, c. 402, Pt. JJ, §10 (NEW) .]

4. **Unethical conduct.** A finding by the National Athletic Trainers' Association's Ethics Committee of a violation of the National Athletic Trainers' Association's Code of Ethics or a finding by the National Athletic Trainers' Association's Board of Certification's Professional Practice and Discipline Committee of a violation of the Board of Certification's Standards of Professional Practice or findings by successor or other organizations with respect to codes of ethics approved by the department.

[2007, c. 402, Pt. JJ, §10 (NEW) .]

SECTION HISTORY
2007, c. 402, Pt. JJ, §10 (NEW).

§14362. DISPOSITION OF FEES

(REPEALED)

SECTION HISTORY
1995, c. 275, §1 (NEW). 1995, c. 502, §H48 (AMD). 2007, c. 402, Pt. JJ, §11 (RP).

Chapter 128: REGULATION OF TRANSIENT SALES

Subchapter 1: DOOR-TO-DOOR HOME REPAIR TRANSIENT SELLERS HEADING: PL 2001, C. 324, §2 (NEW)

§14501. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [2001, c. 324, §3 (AMD).]

1. **Consumer.** "Consumer" means any person who purchases or contracts for the purchase of home repair services.

[1993, c. 444, §1 (NEW) .]

2. **Department.** "Department" means the Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation.

[1993, c. 444, §1 (NEW); 1995, c. 502, Pt. H, §48 (AMD); 2011, c. 286, Pt. B, §5 (REV) .]

3. **Door-to-door sales.** "Door-to-door sales" means the solicitation or sale of home repair services by a home repair seller or the seller's employees to a consumer as a result of or in connection with the seller's or the employee's direct contact accomplished by means of a personal visit to the consumer, other than at the seller's place of business, without the consumer soliciting the initial contact.

[1993, c. 444, §1 (NEW) .]

4. **Employee.** "Employee" means any independent contractor, agent or person working for a salary or a commission who is affiliated with a home repair seller.

[1993, c. 444, §1 (NEW) .]

5. **Home repair seller.** "Home repair seller" means any person, partnership, corporation, business, trust or other legal entity that sells or provides home repair services.

[1993, c. 444, §1 (NEW) .]

6. **Home repair services.** "Home repair services" means to fix, replace, alter, convert, modernize, improve or make an addition to real property primarily designed or used as a residence. "Home repair services" includes, but is not limited to, the construction, installation, replacement, improvement or cleaning of driveways, swimming pools, porches, kitchens, chimneys, chimney liners, garages, fences, fall-out shelters, central air conditioning, central heating, boilers, furnaces, hot water heaters, electric wiring, sewers, plumbing fixtures, storm doors, storm windows, siding or awnings or other improvements to structures within the residence or upon the land adjacent to the residence, including tree trimming.

[1993, c. 444, §1 (NEW) .]

7. **Permanent place of business.** "Permanent place of business" means a building or other permanent structure, including a home residence, that is owned or held under a 12-month lease or rental agreement, from which business is commenced and that is used in whole or in part for the purpose of engaging in sales of home repair services.

[1993, c. 444, §1 (NEW) .]

8. **Residence.** "Residence" means a single-family or multifamily dwelling, including but not limited to a single-family home, apartment building, condominium, duplex or town house that is used or intended to be used by its occupants as a dwelling place.

[1993, c. 444, §1 (NEW) .]

9. **Transient seller of home repair services.** "Transient seller of home repair services," "transient seller" or "seller" means a home repair seller who engages in the business of door-to-door solicitations or sales of home repair services who does not have, at the time of the solicitation or contract, a permanent place of business in the municipality in which the door-to-door solicitation or sale occurs.

[1993, c. 444, §1 (NEW) .]

SECTION HISTORY
1993, c. 444, §1 (NEW). 1995, c. 502, §H48 (AMD). 2001, c. 324, §3 (AMD). 2011, c. 286, Pt. B, §5 (REV).

§14502. EXEMPTIONS

1. **New homes.** This subchapter does not apply to the original construction of a single-family or multifamily residence.

[2001, c. 324, §4 (AMD) .]

2. **Sales amount.** This subchapter does not apply to home repair services for which the gross sales price, including any interest or carrying charges, is less than $25.

[2001, c. 324, §4 (AMD) .]

SECTION HISTORY
1993, c. 444, §1 (NEW). 2001, c. 324, §4 (AMD).

§14503. HOME REPAIR SERVICES CONTRACT

It is a violation of this subchapter if a contract for home repair services to be provided by a transient seller of home repair services fails to meet the written contract requirements, if applicable, of: [2001, c. 324, §5 (AMD).]

1. **Consumer solicitations or sales.** The laws governing consumer solicitations or sales, sections 4661 to 4670;

[1993, c. 444, §1 (NEW) .]

2. **Transient sales.** The laws governing transient sales, sections 14701 to 14716;

[2001, c. 324, §6 (AMD) .]

3. **Home solicitation sales.** The laws governing home solicitation sales, Title 9-A, sections 3-501 to 3-507; and

[1993, c. 444, §1 (NEW) .]

4. **Home construction contracts.** The laws governing home construction contracts, Title 10, sections 1486 to 1490.

[1993, c. 444, §1 (NEW) .]

SECTION HISTORY
1993, c. 444, §1 (NEW). 2001, c. 324, §§5,6 (AMD).

§14504. LICENSE REQUIRED

1. **License required.** A transient seller of home repair services must be licensed by the department and acquire a door-to-door sales license in the manner as set under section 14505 before engaging in the door-to-door sales of home repair services. The licensing requirement under this section is in addition to the licensing requirements applicable to the occupation, trade or profession for which a license is required. A transient seller who solicits sales during the course of a municipal or state repair contract is exempt from this requirement.

[2007, c. 402, Pt. KK, §1 (AMD) .]

2. **Penalty.** The following penalties apply to violations of this section.

A. A person who violates this section commits a Class E crime, which is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. [2003, c. 452, Pt. R, §11 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. A person who intentionally violates this section commits a Class D crime. [2003, c. 452, Pt. R, §11 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. R, §11 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

3. **Enforcement.** This section is enforceable by either the Department of the Attorney General or a district attorney.

[2003, c. 452, Pt. R, §11 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY
1993, c. 444, §1 (NEW). 2001, c. 324, §7 (AMD). 2003, c. 452, §X2 (AFF). 2003, c. 452, §R11 (RPR). 2007, c. 402, Pt. KK, §1 (AMD).

§14505. EVIDENCE OF LICENSURE

Upon licensure, the department shall issue to a transient seller of home repair services a door-to-door sales license that indicates that the person whose name appears on the license is a licensed transient seller of home repair services under this subchapter. The license must also include the name of the seller's company. [2007, c. 402, Pt. KK, §2 (AMD).]

SECTION HISTORY
1993, c. 444, §1 (NEW). 2001, c. 324, §7 (AMD). 2007, c. 402, Pt. KK, §2 (AMD).

§14506. DISCLOSURE OF LICENSE NUMBER

1. **Disclosure required.** A contract for door-to-door sales of home repair services by a transient seller of home repair services must include the seller's door-to-door sales license number in the following manner: State door-to-door sales license #: (fill in number).

[2007, c. 402, Pt. KK, §3 (AMD) .]

2. **Penalty.** The following penalties apply to violations of this section.

A. A person who violates this section commits a Class E crime, which is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. [2003, c. 452, Pt. R, §12 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. A person who intentionally violates this section commits a Class D crime. [2003, c. 452, Pt. R, §12 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. R, §12 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

3. **Enforcement.** This section is enforceable by either the Department of the Attorney General or a district attorney.

[2003, c. 452, Pt. R, §12 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY
1993, c. 444, §1 (NEW). 2003, c. 452, §X2 (AFF). 2003, c. 452, §R12 (RPR). 2007, c. 402, Pt. KK, §3 (AMD).

§14507. APPLICATION

An application for licensure under this chapter must include: [2007, c. 402, Pt. KK, §4 (AMD).]

1. **Application information.** The name, local and permanent business and residential address or addresses, date of birth and social security number of the home repair seller;

[1993, c. 444, §1 (NEW) .]

2. **Employees of the seller.** The names and addresses of employees of the seller, their dates of birth and social security numbers;

[1993, c. 444, §1 (NEW) .]

3. **Statement.** At the time of making the application, a statement of all civil judgments or criminal convictions secured or outstanding against the seller that arises out of home repair services during the 4 years prior to making the application, all criminal and civil suits pending against the seller that arise out of home repair services and all criminal convictions and criminal suits pending for theft against the seller.

The seller shall promptly notify the department of all changes or additions in the information required by this section.

Knowingly, intentionally or recklessly making a false statement in an application is grounds for denial of the application or revocation of the license; and

[2007, c. 402, Pt. KK, §4 (AMD) .]

4. **Photograph.** A recent photograph of the home repair seller.

[1993, c. 444, §1 (NEW) .]

SECTION HISTORY
1993, c. 444, §1 (NEW). 2007, c. 402, Pt. KK, §4 (AMD).

§14508. RENEWAL APPLICATION

An annual renewal application must be filed by the seller on October 31st or at such other times as the department designates. The renewal application must include changes or additions to the information required by section 14507. The renewal application must be accompanied by the renewal fee as set under section 14509. [2007, c. 402, Pt. KK, §5 (AMD).]

SECTION HISTORY
1993, c. 444, §1 (NEW). 2001, c. 324, §8 (AMD). 2007, c. 402, Pt. KK, §5 (AMD).

§14509. LICENSE FEE

The Director of the Office of Professional and Occupational Regulation within the department may establish by rule fees for purposes authorized under this chapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for any one purpose may not exceed $300 annually. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [2007, c. 402, Pt. KK, §6 (AMD); 2011, c. 286, Pt. B, §5 (REV).]

1. **Transient seller registration.**

[1999, c. 685, §25 (RP) .]

2. **Renewal.**

[1999, c. 685, §25 (RP) .]

SECTION HISTORY
1993, c. 444, §1 (NEW). 1999, c. 685, §25 (AMD). 2001, c. 324, §9 (AMD). 2007, c. 402, Pt. KK, §6 (AMD). 2011, c. 286, Pt. B, §5 (REV).

§14510. SERVICE OF PROCESS

(REPEALED)

SECTION HISTORY
1993, c. 444, §1 (NEW). 2013, c. 217, Pt. K, §12 (RP).

§14511. FORMS AND MODEL CONTRACT

(REPEALED)

SECTION HISTORY
1993, c. 444, §1 (NEW). 2001, c. 324, §10 (AMD). 2007, c. 402, Pt. KK, §7 (RP).

§14512. PENALTIES

The penalties in this section are in addition to penalties provided for specific violations within this subchapter. [2003, c. 452, Pt. R, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

1. **Criminal penalty.**

[2003, c. 452, Pt. R, §13 (RP); 2003, c. 452, Pt. X, §2 (AFF) .]

2. **Civil penalty.** The following penalties apply to violations of this subchapter.

A. A transient seller of home repair services or the seller's employee who violates this subchapter commits a civil violation for which a fine of up to $2,000 may be adjudged. This penalty may be assessed against each seller and each employee. [2003, c. 452, Pt. R, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. A transient seller of home repair services or the seller's employee who violates this subchapter after having previously violated this subchapter 2 or more times commits a civil violation for which a fine of not more than $5,000 may be adjudged. [2003, c. 452, Pt. R, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

C. A transient seller of home repair services or the seller's employee who violates this subchapter in a way that injures a consumer who is more than 60 years of age commits a civil violation for which a fine of up to $5,000 may be adjudged. [2003, c. 452, Pt. R, §13 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

This subsection is enforceable by either the Department of the Attorney General or a district attorney.

[2003, c. 452, Pt. R, §13 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

3. **Unfair trade practice.** A transient seller of home repair services who fails to obtain a license in violation of this subchapter commits an unfair trade practice in violation of Title 5, section 207.

[2007, c. 402, Pt. KK, §8 (AMD) .]

4. **Revocation.** In any action under this section the court may also revoke the seller's license to engage in the door-to-door sale of home repair services.

[2007, c. 402, Pt. KK, §9 (AMD) .]

SECTION HISTORY
1993, c. 444, §1 (NEW). 1995, c. 681, §5 (AMD). 2001, c. 324, §11 (AMD). 2003, c. 452, §R13 (AMD). 2003, c. 452, §X2 (AFF). 2007, c. 402, Pt. KK, §§8, 9 (AMD).

§14513. DENIAL OR REFUSAL TO RENEW LICENSE; DISCIPLINARY ACTION

The board may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A for any of the reasons enumerated in Title 10, section 8003, subsection 5-A, paragraph A. [2007, c. 402, Pt. KK, §10 (NEW).]

SECTION HISTORY
2007, c. 402, Pt. KK, §10 (NEW).

Subchapter 2: TRANSIENT SELLERS OF CONSUMER MERCHANDISE HEADING: PL 2001, C. 324, §12 (NEW)

§14701. DEFINITIONS

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings. [2001, c. 324, §12 (NEW).]

1. **Consumer.** "Consumer" means any person who purchases or contracts for the purchase of merchandise for any purpose except resale in the ordinary course of trade or business.

[2001, c. 324, §12 (NEW) .]

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

[2001, c. 324, §12 (NEW) .]

3. **Employee.** "Employee" means any independent contractor, agent or person working for a salary or commission.

[2001, c. 324, §12 (NEW) .]

4. **Merchandise.** "Merchandise" includes any objects, wares, goods, promises, commodities, intangibles, services or other things of value but does not include food or technical or vocational schools located outside of the State that are registered pursuant to Title 20-A, section 9501. "Merchandise" does not include securities that are registered or exempt from registration pursuant to chapter 135, the Maine Uniform Securities Act and rules adopted pursuant to that Act or insurance products that are regulated under Title 24-A.

[2005, c. 347, Pt. E, §1 (AMD) .]

5. **Permanent place of business.** "Permanent place of business" means any building or other permanently affixed structure, including a home residence, that is owned or held under a 12-month lease or rental agreement at the time business is commenced and is used in whole or in part for the purpose of engaging in sales of consumer merchandise.

[2001, c. 324, §12 (NEW) .]

6. **Person.** "Person" includes natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations and any other legal entities.

[2001, c. 324, §12 (NEW) .]

7. **Sale.** "Sale" includes any sale, transfer, exchange or barter, offer for sale, promise to sell or attempt to sell, or advertisement for sale, of any merchandise for cash or for credit.

[2001, c. 324, §12 (NEW) .]

8. **Transient seller of consumer merchandise or transient seller.** "Transient seller of consumer merchandise" or "transient seller" means any person who engages in the business of selling merchandise to consumers by means of personal contact or telephone contact, whether or not the seller is present in the State at the time of the contact or the time of sale, and who does not have, for the purposes of carrying on such business, any permanent place of business within this State. "Transient seller of consumer merchandise" does not include a person who sells at public fairs, expositions or bazaars or a member selling on behalf of public service organizations. "Transient seller of consumer merchandise" does not include a person who sells exclusively by mail contact, except for a person who offers merchandise or money prizes as free of charge, such as contest prizes or gifts for answering a survey, but who requires the recipient to pay something

of value in order to participate in this offer, including, but not limited to, entrance fees, processing fees or handling charges. A "transient seller of consumer merchandise" does not include a supervised lender as defined in Title 9-A, section 1-301, subsection 39.

[2001, c. 324, §12 (NEW) .]

SECTION HISTORY
2001, c. 324, §12 (NEW). 2005, c. 65, §C19 (AMD). 2005, c. 347, §E1 (AMD).

§14702. LICENSURE

1. **License required.** A person who engages in the business of a transient seller of consumer merchandise, including a self-employed person or a person who employs one or more transient sellers of consumer merchandise, must apply to the department and acquire a license in the manner set forth in section 14706 before engaging in sales of consumer merchandise in this State.

[2007, c. 402, Pt. KK, §11 (AMD) .]

2. **Penalty.** The following penalties apply to violations of this section.

A. A person who violates this section commits a Class E crime, which is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. [2003, c. 452, Pt. R, §14 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. A person who intentionally violates this section commits a Class D crime. [2003, c. 452, Pt. R, §14 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. R, §14 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY
2001, c. 324, §12 (NEW). 2003, c. 452, §X2 (AFF). 2003, c. 452, §R14 (RPR). 2007, c. 402, Pt. KK, §11 (AMD).

§14703. LICENSES

1. **Issuance.** The department shall issue to each transient seller of consumer merchandise and employee of that transient seller a license that, among other things, must indicate that the person whose name appears on the license is a licensed seller or employee of a licensed seller under this subchapter.

[2007, c. 402, Pt. KK, §12 (AMD) .]

2. **Possession and presentation.** Every transient seller of consumer merchandise and each of the seller's employees must have a valid license, as required by this subchapter, in the seller's or employee's immediate possession at all times when engaging in sales of consumer merchandise in this State and shall present the license for inspection upon request of any person.

[2007, c. 402, Pt. KK, §12 (AMD) .]

3. **Penalty.** The following penalties apply to violations of this section.

A. A person who violates subsection 2 commits a Class E crime, which is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. [2003, c. 452, Pt. R, §15 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. A person who intentionally violates subsection 2 commits a Class D crime. [2003, c. 452, Pt. R, §15 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. R, §15 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY
2001, c. 324, §12 (NEW). 2003, c. 452, §R15 (AMD). 2003, c. 452, §X2 (AFF). 2007, c. 402, Pt. KK, §12 (AMD).

§14704. DISCLOSURE OF LICENSE NUMBER AND PERMANENT PLACE OF BUSINESS

1. **License number and permanent place of business disclosed in advertisements.** Every time a transient seller of consumer merchandise advertises in this State for the sale of merchandise, whether in print or electronic media, the advertisement must disclose the transient seller's license number in the following manner: "State Department of Professional and Financial Regulation Transient Seller's License Number: (Fill in number)" and must disclose the address of the seller's permanent place of business.

[2007, c. 402, Pt. KK, §13 (AMD) .]

2. **License number and place of business disclosed in written receipt.** Every time a transient seller of consumer merchandise sells merchandise to a consumer in this State, the transient seller shall provide the purchaser with a written receipt, at the time of sale, disclosing the transient seller's license number in the following manner: "State Department of Professional and Financial Regulation Transient Seller's License Number: (Fill in number)" and disclosing the transient seller's name and permanent place of business.

[2007, c. 402, Pt. KK, §13 (AMD) .]

3. **Penalty.** The following penalties apply to violations of this section.

A. A person who violates this section commits a Class E crime, which is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. [2003, c. 452, Pt. R, §16 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. A person who intentionally violates this section commits a Class D crime. [2003, c. 452, Pt. R, §16 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. R, §16 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY
2001, c. 324, §12 (NEW). 2003, c. 452, §R16 (AMD). 2003, c. 452, §X2 (AFF). 2007, c. 402, Pt. KK, §13 (AMD).

§14705. LOCAL REGISTRATION

Nothing in this subchapter affects the right of any town or municipality to make such regulations relative to transient sellers of consumer merchandise as may be permissible under the general law or under any municipal charter. [2001, c. 324, §12 (NEW).]

SECTION HISTORY
2001, c. 324, §12 (NEW).

§14706. APPLICATION

Each application for a transient seller of consumer merchandise license required by section 14702 must include: [2007, c. 402, Pt. KK, §14 (AMD).]

1. **Name and address.** The name and local and permanent business address of the applicant;

[2001, c. 324, §12 (NEW) .]

2. **Employees of applicant.** Names of all employees of the applicant employed in this State;

[2001, c. 324, §12 (NEW) .]

3. **Statement.** A statement of all judgments secured or outstanding against the applicant arising out of sales to consumers during the 2 years immediately prior to making the application and of all suits of either a criminal or civil nature pending against the applicant that arise out of sales to consumers, at the time of making the application;

[2001, c. 324, §12 (NEW) .]

4. **Statement of yearly gross revenues.** A statement of anticipated yearly gross revenues from sales of consumer merchandise in this State;

[2001, c. 324, §12 (NEW) .]

5. **Security deposits.** The name and address of the person to whom security deposits made with the department pursuant to this subchapter are returned; and

[2001, c. 324, §12 (NEW) .]

6. **Seller's certificate.** The number of a valid registration certificate issued to the applicant by the State Tax Assessor pursuant to Title 36, chapter 211 or satisfactory evidence that the applicant is not required to be registered under that chapter.

[2011, c. 548, §9 (AMD) .]

The applicant shall promptly notify the department of all changes or additions in the information required in this section upon a form prescribed by the department. [2001, c. 324, §12 (NEW).]

Any false statement in an application, either original or supplementary, for a license subjects the applicant to the same penalty as if the applicant had no license. [2007, c. 402, Pt. KK, §15 (AMD).]

SECTION HISTORY
2001, c. 324, §12 (NEW). 2007, c. 402, Pt. KK, §§14, 15 (AMD). 2011, c. 548, §9 (AMD).

§14707. RENEWAL APPLICATION

A renewal application made under this subchapter must be filed by the applicant on April 30th annually or at such other times as the Commissioner of Professional and Financial Regulation may designate. The renewal application must include all changes or additions in the information required by section 14706. The renewal application must be accompanied by the renewal fee as set under section 14708. [2007, c. 402, Pt. KK, §16 (AMD).]

SECTION HISTORY

2001, c. 324, §12 (NEW). 2007, c. 402, Pt. KK, §16 (AMD).

§14708. LICENSE FEE AND SECURITY DEPOSIT

1. **Fees.** The Director of the Office of Professional and Occupational Regulation within the department may establish by rule fees for purposes authorized under this subchapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for any one purpose may not exceed $300. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

[2007, c. 402, Pt. KK, §17 (AMD); 2011, c. 286, Pt. B, §5 (REV) .]

2. **Dedicated revenues.**

[2007, c. 402, Pt. KK, §17 (RP) .]

3. **Security deposit.** Every person that engages in the business of transient sellers of consumer merchandise, including the self-employed or those who employ one or more transient sellers of consumer merchandise, shall also make a security deposit of $10,000 or of a sum equal to the anticipated yearly gross revenues in this State, whichever is less, with the department for the protection of consumers as described in section 14712. The security deposit may be made by a bond as drawn by the department and as secured by a surety approved by the department. Only one security deposit is required of each person engaged in transient sales of consumer merchandise.

[2001, c. 324, §12 (NEW) .]

4. **License issued.** The department shall issue to a transient seller of consumer merchandise and to employees of that transient seller a license upon receipt of a completed application with the fees as set under subsection 1 and the security deposit required by subsection 3.

[2007, c. 402, Pt. KK, §17 (AMD) .]

SECTION HISTORY
2001, c. 324, §12 (NEW). 2007, c. 402, Pt. KK, §17 (AMD). 2011, c. 286, Pt. B, §5 (REV).

§14709. WAIVER OF SECURITY DEPOSIT

Transient sellers of consumer merchandise may apply to the department for waiver of the security deposit required by section 14708 by presenting to the authorized person within the department the following information in addition to the information required under section 14706: [2001, c. 324, §12 (NEW).]

1. **Consumer sales.** A sworn statement by the applicant that the applicant has continuously engaged in consumer sales in this State for a period not less than 3 years;

[2001, c. 324, §12 (NEW) .]

2. **Theft offenses; fraudulent or deceptive business practice.** A sworn statement by the applicant that neither the applicant nor any employee of the applicant operating in this State has been convicted of any theft offense or fraudulent or deceptive business practice in any United States' jurisdiction;

[2001, c. 324, §12 (NEW) .]

3. **Complaints on file against applicant.** A letter from the Attorney General's office in the state where the applicant has its principal place of business stating the nature or absence thereof of complaints on file against the applicant; and

[2001, c. 324, §12 (NEW) .]

4. **Letter of recommendation.** A letter of recommendation from an appropriate trade association that promotes sound and ethical trade practices and the processing of consumer complaints that states the applicant is a member in good standing of that association.

[2001, c. 324, §12 (NEW) .]

The authorized person within the department shall forward the completed application for waiver of the security deposit to the Office of the Attorney General for review and shall within 15 days of receipt of the completed application and with the advice of the Attorney General grant or deny the application for waiver. [2001, c. 324, §12 (NEW).]

SECTION HISTORY
2001, c. 324, §12 (NEW).

§14710. REVOCATION OF RIGHT TO WAIVE SECURITY DEPOSIT

The authorized person within the department shall rescind the right of a transient seller of consumer merchandise to waive a security deposit upon occurrence of any of the following: [2001, c. 324, §12 (NEW).]

1. **Conviction for theft or fraudulent business practices.** The transient seller of consumer merchandise or any employee is convicted of a theft offense or fraudulent or deceptive business practice;

[2001, c. 324, §12 (NEW) .]

2. **Failure to defend action under Title 5, chapter 10.** The transient seller of consumer merchandise or any employee fails to successfully defend any action brought against it under Title 5, chapter 10; or

[2001, c. 324, §12 (NEW) .]

3. **Failure to negotiate consumer complaints.** The transient seller of consumer merchandise or any employee fails to negotiate consumer complaints filed against it with the Attorney General.

[2001, c. 324, §12 (NEW) .]

SECTION HISTORY
2001, c. 324, §12 (NEW).

§14711. EXPIRATION

1. **Licenses.** Licenses issued under section 14703 expire:

A. On the date that the licensee establishes a permanent place of business and surrenders the licensee's license to the department; [2007, c. 402, Pt. KK, §18 (AMD).]

B. When the licensee fails to file a renewal application as required by section 14707; or [2007, c. 402, Pt. KK, §18 (AMD).]

C. Upon the surrender of the license for cancellation. [2007, c. 402, Pt. KK, §18 (AMD).]

[2007, c. 402, Pt. KK, §18 (AMD) .]

SECTION HISTORY
2001, c. 324, §12 (NEW). 2007, c. 402, Pt. KK, §18 (AMD).

§14712. SECURITY DEPOSIT SUBJECT TO CLAIMS; ORDER OF PREFERENCE; RETURN OF SECURITY DEPOSIT

Each security deposit made under section 14708 is subject, as long as it remains in the hands of the department, to the attachment and execution in behalf of consumers whose claims arise in connection with the transient sale of consumer merchandise in this State. The department may be impleaded as a trustee in any civil action brought against any licensee and shall pay over, under order of court, such sum of money as the department may be found chargeable. The security deposit is subject to the payment of any fines and penalties incurred by the licensee through any of the provisions of this subchapter, and the clerk of the court in which that fine or penalty is imposed shall notify the department of the name of the licensee against whom that fine or penalty is adjudged and of the amount of that fine or penalty. The department, if it has in its possession a sufficient sum deposited by that licensee, shall pay the sum so specified to the clerk. If the department does not have a sufficient sum so deposited, it shall make payment of as much as it has in its possession. All claims upon the deposit must be satisfied after judgment, fine and penalty, in the order in which the order of court is entered in the respective suits, until all claims are satisfied or the security deposit is exhausted. A security deposit may not be paid over by the department to a licensee as long as there are any outstanding claims or notices of claims that are subject of suit against the licensee, in which case the department shall retain only such sum of the security deposit as is subject of claim. [2007, c. 402, Pt. KK, §19 (AMD).]

The security deposit required under section 14708 must be returned to the person so designated pursuant to section 14706, subsection 5 in the licensee's application for licensure made under section 14702 12 months following the expiration of the license. [2007, c. 402, Pt. KK, §19 (AMD).]

SECTION HISTORY
2001, c. 324, §12 (NEW). 2007, c. 402, Pt. KK, §19 (AMD).

§14713. VIOLATIONS; UNFAIR TRADE PRACTICE

1. **Criminal penalty.**

[2003, c. 452, Pt. R, §17 (RP); 2003, c. 452, Pt. X, §2 (AFF) .]

2. **Unfair trade practice.** A person who fails to comply with this subchapter commits a violation of Title 5, chapter 10.

[2001, c. 324, §12 (NEW) .]

SECTION HISTORY
2001, c. 324, §12 (NEW). 2003, c. 452, §R17 (AMD). 2003, c. 452, §X2 (AFF).

§14714. SERVICE OF PROCESS

(REPEALED)

SECTION HISTORY
2001, c. 324, §12 (NEW). 2013, c. 217, Pt. K, §13 (RP).

§14715. DENIAL OR REFUSAL TO RENEW LICENSE; DISCIPLINARY ACTION

In addition to the grounds enumerated in Title 10, section 8003, subsection 5-A, paragraph A, the department may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A for: [2007, c. 402, Pt. KK, §20 (NEW).]

1. **Misrepresentations.** Misrepresentation of any material fact relating to the terms or conditions of sale;

[2007, c. 402, Pt. KK, §20 (RPR) .]

2. **False impressions.** Creation of an impression that is false or that the transient seller of consumer merchandise does not believe to be true; or

[2007, c. 402, Pt. KK, §20 (RPR) .]

3. **False promises.** Promising of performance that the transient seller of consumer merchandise does not intend to perform or believes will not be performed.

[2007, c. 402, Pt. KK, §20 (RPR) .]

SECTION HISTORY
2001, c. 324, §12 (NEW). 2007, c. 402, Pt. KK, §20 (RPR).

§14716. TELEMARKETERS

1. **Incorporation of federal standards.** Violation of any provision of the Federal Trade Commission's Telemarketing Sales Rule, 16 Code of Federal Regulations, Part 310, as in effect on January 1, 2000, by a transient seller of consumer merchandise is a violation of this subchapter.

[2001, c. 324, §12 (NEW) .]

2. **Additional prohibitions.** A transient seller of consumer merchandise who is a telemarketer, as defined in the Federal Trade Commission's Telemarketing Sales Rule, 16 Code of Federal Regulations, Section 310.2, as in effect on January 1, 2000, and who initiates telephone contact with a consumer may not procure the services of any professional delivery courier or other pick-up service to obtain immediate receipt or possession of a consumer's payment, unless the goods are delivered with the opportunity to inspect before any payment is collected.

[2001, c. 324, §12 (NEW) .]

3. **Do-not-call list.**

[2007, c. 227, §3 (RP) .]

4. **Other applicable law.** A transient seller of consumer merchandise who is a telemarketer, as defined in the Federal Trade Commission's Telemarketing Sales Rule, 16 Code of Federal Regulations, Section 310.2, as in effect on January 1, 2000, is subject to and shall comply with the provisions of chapter 69, subchapter V.

[2001, c. 324, §12 (NEW) .]

SECTION HISTORY
2001, c. 324, §12 (NEW). 2007, c. 227, §3 (AMD).

Chapter 130: THE PROPANE AND NATURAL GAS ACT

§14801. SHORT TITLE

(REPEALED)

SECTION HISTORY
1995, c. 389, §4 (NEW). 2009, c. 344, Pt. C, §2 (RP). 2009, c. 344, Pt. E, §2 (AFF).

§14802. DEFINITIONS

(REPEALED)

SECTION HISTORY
1995, c. 389, §4 (NEW). 1997, c. 270, §1 (AMD). 1999, c. 133, §1 (AMD). 1999, c. 386, §§V1-3 (AMD). 2007, c. 402, Pt. LL, §§1, 2 (AMD). 2009, c. 344, Pt. C, §2 (RP). 2009, c. 344, Pt. E, §2 (AFF).

§14803. BOARD ESTABLISHED

(REPEALED)

SECTION HISTORY
1995, c. 389, §4 (NEW). 2003, c. 420, §1 (AMD). 2007, c. 402, Pt. LL, §3 (AMD). 2009, c. 344, Pt. C, §2 (RP). 2009, c. 344, Pt. E, §2 (AFF).

§14804. BOARD POWERS

(REPEALED)

SECTION HISTORY
1995, c. 389, §4 (NEW). 1997, c. 727, §C16 (AMD). 1999, c. 386, §V4 (AMD). 2003, c. 204, §F1 (AMD). 2007, c. 402, Pt. LL, §4 (AMD). 2009, c. 344, Pt. C, §2 (RP). 2009, c. 344, Pt. E, §2 (AFF).

§14805. INSTALLATIONS TO CONFORM TO STANDARDS; AUTHORITY OF STATE PROPANE AND NATURAL GAS INSPECTORS

(REPEALED)

SECTION HISTORY
1995, c. 389, §4 (NEW). 1999, c. 386, §§V5,6 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2003, c. 452, §§R18,19 (AMD). 2003, c. 452, §X2 (AFF). 2005, c. 347, §F1 (AMD). 2007, c. 402, Pt. LL, §§5-8 (AMD). 2007, c. 621, §§19, 20 (AMD). 2009, c. 344, Pt. C, §2 (RP). 2009, c. 344, Pt. E, §2 (AFF).

§14806. DENIAL OR REFUSAL TO RENEW LICENSE; DISCIPLINARY ACTION

(REPEALED)

SECTION HISTORY
1995, c. 389, §4 (NEW). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2007, c. 402, Pt. LL, §9 (RPR). 2009, c. 344, Pt. C, §2 (RP). 2009, c. 344, Pt. E, §2 (AFF).

§14806-A. EMPLOYING UNLICENSED PERSON

(REPEALED)

SECTION HISTORY
2007, c. 402, Pt. LL, §10 (NEW). 2009, c. 344, Pt. C, §2 (RP). 2009, c. 344, Pt. E, §2 (AFF).

§14807. LICENSURE; REQUIREMENTS; PERSONS

(REPEALED)

SECTION HISTORY
1995, c. 389, §4 (NEW). 1997, c. 270, §2 (AMD). 1999, c. 133, §2 (AMD). 1999, c. 386, §§V7-10 (AMD). 1999, c. 790, §B5 (AMD). 2007, c. 392, §2 (AMD). 2007, c. 402, Pt. LL, §11 (AMD). 2009, c. 344, Pt. C, §2 (RP). 2009, c. 344, Pt. E, §2 (AFF).

§14808. LICENSURE; INSTALLATION AND MAINTENANCE STANDARDS; DISPENSING STATIONS

(REPEALED)

SECTION HISTORY
1995, c. 389, §4 (NEW). 1997, c. 270, §3 (AMD). 2007, c. 402, Pt. LL, §§12-14 (AMD). 2009, c. 344, Pt. C, §2 (RP). 2009, c. 344, Pt. E, §2 (AFF).

§14810. ENFORCEMENT; PENALTIES

(REPEALED)

SECTION HISTORY
1995, c. 389, §4 (NEW). 1995, c. 502, §H48 (AMD). 2007, c. 402, Pt. LL, §15 (RP).

§14811. INSPECTORS

(REPEALED)

SECTION HISTORY
1995, c. 389, §4 (NEW). 2009, c. 344, Pt. C, §2 (RP). 2009, c. 344, Pt. E, §2 (AFF).

§14812. DISPOSAL OF FEES

(REPEALED)

SECTION HISTORY
1995, c. 389, §4 (NEW). 1995, c. 502, §H48 (AMD). 2007, c. 402, Pt. LL, §16 (RP).

§14813. FEES

(REPEALED)

SECTION HISTORY

1995, c. 389, §4 (NEW). 1999, c. 386, §V12 (AMD). 2007, c. 402, Pt. LL, §17 (RPR). 2009, c. 344, Pt. C, §2 (RP). 2009, c. 344, Pt. E, §2 (AFF).

§14814. RENEWALS

(REPEALED)

SECTION HISTORY
1995, c. 389, §4 (NEW). 1999, c. 386, §V13 (AMD). 2007, c. 402, Pt. LL, §18 (AMD). 2009, c. 344, Pt. C, §2 (RP). 2009, c. 344, Pt. E, §2 (AFF).

§14815. ENDORSEMENT WITH OTHER STATES

(REPEALED)

SECTION HISTORY
1995, c. 389, §4 (NEW). 2009, c. 344, Pt. C, §2 (RP). 2009, c. 344, Pt. E, §2 (AFF).

§14816. EXEMPTION

(REPEALED)

SECTION HISTORY
1995, c. 389, §4 (NEW). 1995, c. 625, §A44 (RPR). 2009, c. 344, Pt. C, §2 (RP). 2009, c. 344, Pt. E, §2 (AFF).

Chapter 131: BOILERS AND PRESSURE VESSELS

§15101. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

1. **Approved.**

[2013, c. 70, Pt. C, §1 (RP) .]

2. **Authorized inspector.** "Authorized inspector" means a person holding a license to inspect boilers and pressure vessels within this State issued under section 15120.

[2013, c. 70, Pt. C, §2 (AMD) .]

3. **Board.**

[2013, c. 70, Pt. C, §3 (RP) .]

4. **Chief inspector.** "Chief inspector" means the Chief Inspector of Boilers and Pressure Vessels approved under section 15106.

[1999, c. 386, Pt. W, §3 (AMD) .]

5. **Code.** "Code" means the boiler and pressure vessel code of the American Society of Mechanical Engineers and amendments and interpretations made and approved by the council of the society.

[1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF) .]

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

[1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF) .]

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

[1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF) .]

8. **Deputy inspector.** "Deputy inspector" means a person, employed by the State and supervised by the chief inspector, authorized to inspect boilers and pressure vessels within this State.

[2013, c. 70, Pt. C, §4 (AMD) .]

8-A. **Director.** "Director" means the Director of the Office of Professional and Occupational Regulation within the department.

[2013, c. 70, Pt. C, §5 (NEW) .]

9. **Miniature boiler.** "Miniature boiler" means a boiler as defined by the code.

[1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF) .]

10. **Schoolhouse.** "Schoolhouse" includes, but is not limited to, any structure used by schools or colleges, public or private, for the purpose of housing classrooms, gymnasiums, auditoriums or dormitories.

[1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF) .]

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 1999, c. 386, §W3 (AMD). 2013, c. 70, Pt. C, §§1-5 (AMD).

§15101-A. DECLARATION OF POLICY

It is the policy of the State to protect its citizens from unnecessary mechanical hazards in the operation of boilers and pressure vessels and to ensure that reasonable design and construction are used, that accepted safety devices and sufficient personnel are provided and that periodic maintenance, inspections and adjustments considered essential for the safe operation of boilers and pressure vessels are made. The responsibility for design, construction, maintenance and inspection rests with the firm, person, partnership, association, corporation or company that owns boilers and pressure vessels. [2013, c. 70, Pt. C, §6 (NEW).]

SECTION HISTORY
2013, c. 70, Pt. C, §6 (NEW).

§15102. EXEMPTIONS

1. **Boilers.** This chapter does not apply to:

A. Boilers that are under federal control; [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

B. Boilers used solely for propelling motor road vehicles; [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

C. Boilers of steam fire engines brought into the State for temporary use in times of emergency to check conflagrations; [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

D. Boilers used for agricultural purposes only; [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

E. Steam heating boilers, hot water heating boilers and hot water supply boilers constructed and installed in accordance with the rules adopted by the director; or [2013, c. 595, Pt. U, §11 (AMD).]

F. Miniature boilers exempt pursuant to section 15103-A. [2013, c. 70, Pt. C, §8 (AMD).]

[2013, c. 595, Pt. U, §11 (AMD) .]

2. **Pressure vessels.** This chapter does not apply to:

A. Pressure vessels that are under federal control; [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

B. Pressure vessels used for the transportation and storage of compressed or liquefied gases constructed in compliance with specifications of the United States Department of Transportation; [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

C. Pressure vessels located on vehicles operating under the rules of other state authorities and used for carrying passengers or freight; [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

D. Pressure vessels installed on the right-of-way of railroads and used directly in the operation of trains; [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

E. Pressure vessels used solely for agricultural purposes on farms; [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

F. Pressure vessels located in private residences and apartment houses with fewer than 6 apartments; [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

G. Pressure vessels having an internal or external operating pressure not exceeding 15 pounds per square inch; [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

H. Vessels for containing water under pressure, including those containing air, the compression of which serves only as a cushion, when neither of the following limitations is exceeded:

(1) A design pressure of 300 pressure pounds per square inch; or

(2) A design temperature of 210 degrees Fahrenheit; [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

I. Pressure vessels containing water heated by steam or any other direct or indirect means when none of the following limitations are exceeded:

(1) A heat input of 200,000 British thermal units per hour;

(2) A water temperature of 200 degrees Fahrenheit; or

(3) A normal water-containing capacity of 120 gallons; [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

J. Pressure vessels that do not exceed:

(1) Five cubic feet in volume and 250 pounds per square inch gauge pressure;

(2) One and 1/2 cubic feet in volume and 600 pounds per square inch gauge pressure; or

(3) An inside diameter of 6 inches with no limitation on pressure; or [2003, c. 204, Pt. G, §1 (AMD).]

K. Pressure vessels that are used as an integral part of a circuit breaker or transformer. [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

[2003, c. 204, Pt. G, §1 (AMD) .]

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 1999, c. 386, §W4 (AMD). 2003, c. 204, §G1 (AMD). 2013, c. 70, Pt. C, §§7, 8 (AMD). 2013, c. 595, Pt. U, §11 (AMD).

§15103. BOARD OF BOILERS AND PRESSURE VESSELS

(REPEALED)

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 1999, c. 386, §W5 (AMD). 2007, c. 402, Pt. MM, §1 (AMD). 2013, c. 70, Pt. C, §9 (RP).

§15103-A. DIRECTOR'S POWERS AND DUTIES

1. **Regulation.** The director shall administer, coordinate and enforce this chapter. The director may appoint an advisory committee to assist the director on any matter that may arise under this chapter, as needed.

[2013, c. 70, Pt. C, §10 (NEW) .]

2. **Rule-making authority.** The director shall establish guidelines and adopt rules necessary for the proper administration and enforcement of this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. The rules must address, but are not limited to:

A. Requirements for the safe and proper construction, installation, repair, use and operation of boilers and pressure vessels in this State. The rules must conform as nearly as practicable to the code; [2013, c. 70, Pt. C, §10 (NEW).]

B. Requirements for licensure of boiler operators, stationary steam engineers and authorized inspectors; [2013, c. 70, Pt. C, §10 (NEW).]

C. Qualifications of welders performing welding on boilers and pressure vessels; [2013, c. 70, Pt. C, §10 (NEW).]

D. Requirements for the method and frequency of boiler and pressure vessel inspections; [2013, c. 70, Pt. C, §10 (NEW).]

E. Requirements for the nature and size of miniature boilers or pressure vessels to be inspected; and [2013, c. 70, Pt. C, §10 (NEW).]

F. Criteria by which a temporary extension of an inspection certificate beyond 14 months in the case of boilers and beyond 38 months in the case of pressure vessels may be authorized. [2013, c. 70, Pt. C, §10 (NEW).]

[2013, c. 70, Pt. C, §10 (NEW) .]

SECTION HISTORY
2013, c. 70, Pt. C, §10 (NEW).

§15104. RULES

(REPEALED)

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 1999, c. 386, §W6 (RP).

§15104-A. POWERS AND DUTIES

(REPEALED)

SECTION HISTORY
1999, c. 386, §W7 (NEW). 2001, c. 573, §A1 (AMD). 2007, c. 402, Pt. MM, §2 (AMD). 2013, c. 70, Pt. C, §11 (RP).

§15104-B. APPEALS; VARIANCES

A person aggrieved by an order or act of the chief inspector or a deputy inspector under this chapter may, within 15 days after notice of the order or act, appeal from the order or act to the director, who shall hold a hearing pursuant to Title 5, chapter 375, subchapter 4. After the hearing, the director shall issue an appropriate order either approving or disapproving the order or act. [2013, c. 70, Pt. C, §12 (AMD).]

A person who is or will be aggrieved by the application of any law, code or rule relating to the installation or alteration of boilers and pressure vessels may file a petition for a variance, whether compliance with that provision is required at the time of filing or at the time that provision becomes effective. The filing fee for a petition for a variance must be set by the director under section 15104-C. The chief inspector may grant a variance if, owing to conditions especially affecting the particular boiler or pressure vessel involved, the enforcement of any law, code or rule relating to boilers or pressure vessels would do manifest injustice or cause substantial hardship, financial or otherwise, to the petitioner or would be unreasonable under the circumstances as long as desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of that law, code or rule. In granting a variance under this section, the chief inspector may impose limitations both of time and of use, and a continuation of the use permitted may be conditioned upon compliance with rules made and amended from time to time. A copy of the decision must be sent to all interested parties. [2013, c. 70, Pt. C, §12 (AMD).]

SECTION HISTORY
2001, c. 573, §A2 (NEW). 2007, c. 695, Pt. B, §20 (AMD). 2011, c. 286, Pt. B, §5 (REV). 2013, c. 70, Pt. C, §12 (AMD).

§15104-C. FEES

The director may establish by rule fees for purposes authorized under this chapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for any accreditation review, facility review or inspection of any one boiler or pressure vessel may not exceed $500, the fee for any shop inspection may not exceed $3,000, the fee for an inspection certificate for any one boiler or pressure vessel may not exceed $100, the fee for a late inspection or a late certificate may not exceed $250 and the fee for any other purpose may not exceed $150. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [2013, c. 70, Pt. C, §13 (AMD).]

SECTION HISTORY
2007, c. 402, Pt. MM, §3 (NEW). 2011, c. 286, Pt. B, §5 (REV). 2013, c. 70, Pt. C, §13 (AMD).

§15105. INSTALLATION OF NEW BOILERS AND PRESSURE VESSELS

A new boiler or pressure vessel that does not conform to the rules adopted by the director governing new installations may not be installed in this State. [2013, c. 70, Pt. C, §14 (AMD).]

Unless otherwise exempt, all new boilers and pressure vessels to be installed must be inspected during construction by an inspector authorized to inspect boilers in this State, or, if constructed outside the State, by an inspector holding a license from this State or an inspector who holds a certificate of inspection issued by the National Board of Boiler and Pressure Vessel Inspectors, or its successor or other organization approved by the director. [2013, c. 70, Pt. C, §14 (AMD).]

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 1999, c. 386, §W8 (AMD). 2007, c. 402, Pt. MM, §4 (AMD). 2013, c. 70, Pt. C, §14 (AMD).

§15106. CHIEF AND DEPUTY INSPECTORS

The commissioner shall appoint and may remove for cause when so appointed a person to be chief inspector at any time the office may become vacant. The chief inspector must have, at the time of the appointment, not fewer than 5 years' practical experience with steam boilers as a steam engineer, mechanical engineer, boilermaker or boiler inspector as described in section 15103-A. [2013, c. 70, Pt. C, §15 (AMD).]

The commissioner may likewise hire deputy inspectors as necessary to carry out this chapter. [1999, c. 386, Pt. W, §9 (AMD).]

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 1999, c. 386, §W9 (AMD). 2013, c. 70, Pt. C, §15 (AMD).

§15107. DEPUTY AND AUTHORIZED INSPECTORS TO BE EXAMINED

(REPEALED)

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 1999, c. 386, §W10 (RP).

§15108. CHIEF AND DEPUTY INSPECTORS TO FURNISH BOND

(REPEALED)

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 1999, c. 386, §W10 (RP).

§15108-A. BOILER AND PRESSURE VESSEL INSPECTORS

(REPEALED)

SECTION HISTORY
1999, c. 386, §W11 (NEW). 2001, c. 323, §35 (AMD). 2007, c. 695, Pt. B, §21 (AMD). 2013, c. 70, Pt. C, §16 (RP).

§15108-B. INVESTIGATIONS OF COMPLAINTS; REVOCATION OF LICENSE, REGISTRATION OR CERTIFICATE

(REPEALED)

SECTION HISTORY
1999, c. 386, §W11 (NEW). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2001, c. 573, §A3 (AMD). 2007, c. 402, Pt. MM, §5 (RP).

§15108-C. DENIAL OR REFUSAL TO RENEW LICENSE; DISCIPLINARY ACTION

In addition to the grounds enumerated in Title 10, section 8003, subsection 5-A, paragraph A, the director may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A for: [2013, c. 70, Pt. C, §17 (AMD).]

1. **Operating under the influence.** Operating or being in charge of a plant while under the influence of intoxicating beverages or narcotic drugs;

[2007, c. 402, Pt. MM, §6 (NEW) .]

2. **Physical or mental incapacity.** Suffering from physical or mental incapacity that would jeopardize physical property or lives in the exercise of the license; or

[2007, c. 402, Pt. MM, §6 (NEW) .]

3. **Operating without authority.** Operating or having charge of a plant over which the licensee or applicant lacked authority.

[2007, c. 402, Pt. MM, §6 (NEW) .]

SECTION HISTORY
2007, c. 402, Pt. MM, §6 (NEW). 2013, c. 70, Pt. C, §17 (AMD).

§15109. STATIONARY STEAM ENGINEERS AND BOILER OPERATORS

1. **Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Capacity" means the potential output of a steam boiler designated in pounds per hour of steam flow or its equivalent based on heating surface in the applicable chapter of the code. [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

B. "Committee" means the examination committee as set forth in this section. [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

C. "Have charge of" means the general supervisory control over the operation and maintenance of a plant and other stationary steam engineers or other personnel engaged in the operation of the plant. [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

D. "Operate" means to control by observation and manipulation of mechanical or automatic and remote controls equipment in connection with a plant, but does not include persons who "have charge of" the plant. [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

E. "Plant" means heating plant, power plant or process plant. [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

F. "#/HR" means pounds of steam per hour output or equivalent. [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

G. "Psi" means pounds per square inch. [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

H. "Supervise" means to have supervisory control over the operation and maintenance of a plant, other stationary steam engineers or other personnel engaged in the operation or maintenance of a plant, but does not mean "have charge of" as defined in paragraph C. [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

[1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF) .]

2. **Licenses.**

[2003, c. 597, §1 (RP) .]

2-A. **Licenses.** In order to safeguard life, health and property, the director shall provide for the mandatory licensing of stationary steam engineers and boiler operators. This subsection does not apply to:

A. Persons operating boilers exempt under section 15102; [2003, c. 597, §2 (NEW).]

B. Persons employed by entities under the jurisdiction of the Public Utilities Commission or the United States Nuclear Regulatory Commission, or its successor or other organization approved by the director; or [2013, c. 70, Pt. C, §18 (AMD).]

C. Persons operating steam heating boilers, hot water heating boilers and hot water supply boilers located in schoolhouses or owned by municipalities. [2003, c. 597, §2 (NEW).]

[2013, c. 70, Pt. C, §18 (AMD) .]

3. **Issuance of license.** The director shall issue a license to an applicant in the grade requested, upon payment of the application fee and license fee as set under section 15104-C, if the applicant has satisfactorily met the examination and other requirements of this section.

A. A license expires on the date set by the commissioner pursuant to Title 10, section 8003, subsection 4 for the licensing period for which the license is issued. A license may be renewed upon receipt of the application for renewal and payment of the renewal fee as set in section 15104-C.

A license may be renewed up to 90 days after the date of its expiration upon payment of a late fee in addition to the renewal fee as set under section 15104-C. Any person who submits an application for renewal more than 90 days after the license expiration date shall pay an additional late fee as set under section 15104-C and is subject to all requirements governing new applicants under this chapter, except that the director, after giving due consideration to the protection of the public, may waive examination or other requirements. Notwithstanding any other provision of this chapter, the director shall waive examination if a renewal application is made within 90 days after separation from the United States Armed Forces, under conditions other than dishonorable, by a person who has failed to renew that person's license because that person was on active duty in the Armed Forces; except that the waiver of examination may not be granted if the person served more than 4 years in the Armed Forces, except if that person is required by some mandatory provision to serve a longer period and that person submits satisfactory evidence of this mandatory provision to the director. [2013, c. 70, Pt. C, §19 (AMD).]

B. The license certificate must be displayed in plain view in the plant where the licensee is employed. [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

C. The director shall determine the eligibility for licensure of any applicant who holds a current stationary steam engineering license issued by the proper authority of any state, territory or possession of the United States, the District of Columbia or Canada that has requirements equal to those of this State and recognizes the license issued by this State without further examination. The director shall certify as eligible for a license any applicant who holds a current Canadian marine or United States Coast Guard marine engineer's license and who has worked as a boiler engineer or operator 3 of the last 5 years prior to application. The applicant bears the burden of proving those matters necessary for a license based on reciprocity. [2013, c. 70, Pt. C, §19 (AMD).]

[2013, c. 70, Pt. C, §19 (AMD) .]

4. **Denial or revocation of license.**

[1999, c. 386, Pt. W, §13 (RP) .]

5. **Examination committee.**

[2007, c. 402, Pt. MM, §9 (RP) .]

5-A. **Examination committee; duties.**

[2007, c. 402, Pt. MM, §10 (RP) .]

6. **Examinations.**

[1999, c. 386, Pt. W, §16 (RP) .]

6-A. **Examinations.** Applicants for licensure shall present to the director a written application for examination accompanied by the required fee as set under section 15104-C. Examinations must be in whole or in part in writing and of a thorough and practical character commensurate with the responsibilities of the prospective license holder.

The passing grade on any examination may not be less than 70%.

[2013, c. 70, Pt. C, §20 (AMD) .]

7. **Scope of licenses.** The scope of a boiler operator's license and 4 classes of engineering licenses is as set out in this subsection.

A. [2003, c. 597, §4 (RP).]

B. The holder of a boiler operator's license may operate, supervise or have charge of a heating plant having a capacity of not more than 20,000 #/HR or operate or supervise a plant up to the capacity of the license of the engineer in charge of the plant in which the licensee is employed. The applicant for a boiler operator's license must have 6 months' operating experience prior to examination under a boiler operator's training permit. The director shall issue a permit for the purpose of gaining that experience upon receipt of the required fee as set under section 15104-C. Such a permit must be limited to a specified plant and must be limited to one year. The director may extend the permit for a period not to exceed one year under unusual circumstances. The director may allow the owner of a small plant to sit for the boiler operator's examination without first obtaining a boiler operator's training permit. [2013, c. 70, Pt. C, §21 (AMD).]

C. The holder of a 4th-class engineer's license may have charge of a plant of not more than 50,000 #/HR or operate or supervise a plant up to the capacity of the license of the engineer in charge of the plant in which the licensee is employed. An applicant for a 4th-class engineer's license must be a high school graduate or have equivalent education and at least one year of operating or supervising experience under a duly licensed engineer having charge of a plant. An applicant for a 4th-class engineer's license must have at least one year operating or supervising experience as a boiler operator. [2003, c. 597, §6 (AMD).]

D. The holder of a 3rd-class engineer's license may have charge of a plant of not more than 100,000 #/HR or operate or supervise a plant up to the capacity of the license of the engineer in charge of the plant in which the licensee is employed. An applicant for a 3rd-class engineer's license must have at least one year operating or supervising experience as a 4th-class engineer. [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

E. The holder of a 2nd-class engineer's license may have charge of a plant of not more than 200,000 #/HR or operate or supervise a plant up to the capacity of the license of the engineer in charge of the plant in which the licensee is employed. An applicant for a 2nd-class engineer's license must have at least 2 years operating or supervising experience as a 3rd-class engineer. [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

F. The holder of a first-class engineer's license may operate, supervise or have charge of a plant of unlimited steam capacity. An applicant for a first-class engineer's license must have at least 2 years operating or supervisory experience as a 2nd-class engineer. [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

G. One year of schooling in the field of boiler operation in a school approved by the director is equivalent to 6 months of operating experience. The director may conduct an accreditation review of the technical school. The technical school shall pay a fee for the accreditation review. [2013, c. 70, Pt. C, §22 (AMD).]

H. In the event of a lack of qualified personnel in the plant in which the applicant is employed, the director may waive the operating experience requirements of the applicant for examination for the next higher grade of license. Any such license issued must be limited to that plant. [2013, c. 70, Pt. C, §23 (AMD).]

I. Notwithstanding the provisions of this subsection, the director may permit an applicant to take the examination for a license if, in the director's opinion, the experience or educational qualifications, or both, of the applicant are equivalent to the operating experience required by this subsection. [2013, c. 70, Pt. C, §23 (AMD).]

[2013, c. 70, Pt. C, §§21-23 (AMD) .]

8. Rules.

[2013, c. 70, Pt. C, §24 (RP) .]

9. Fees.

[2007, c. 402, Pt. MM, §14 (RP) .]

10. Committee expenses.

[2007, c. 402, Pt. MM, §15 (RP) .]

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 1997, c. 691, §2 (AMD). 1999, c. 127, §D5 (AFF). 1999, c. 386, §§W12-20 (AMD). 2001, c. 323, §§36-39 (AMD). 2001, c. 573, §A4 (AMD). 2003, c. 597, §§1-6 (AMD). 2007, c. 402, Pt. MM, §§7-15 (AMD). 2013, c. 70, Pt. C, §§18-24 (AMD).

§15110. WELDING ON BOILERS AND PRESSURE VESSELS; CERTIFICATES FOR WELDERS

A welder may not make welded repairs to any boiler or pressure vessel covered by this chapter, without first receiving authorization from the chief inspector or the authorized inspector employed by the insurance company responsible for the inspection of the boiler or pressure vessel. The authorization may be in the form of a general agreement between the chief inspector or the appropriate authorized inspector and the owner or the owner's representative. [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

The director may conduct a welding test facility review. The welding test facility shall pay the required fee for the review. [2013, c. 70, Pt. C, §25 (AMD).]

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 1999, c. 386, §W21 (AMD). 2001, c. 323, §§40,41 (AMD). 2013, c. 70, Pt. C, §25 (AMD).

§15111. OPERATION OF CONDEMNED VESSELS

A boiler or pressure vessel that has been condemned for further use in this or any other state by an authorized inspector employed by an insurance company or by an inspector authorized to inspect boilers by a state or the Federal Government may not be installed or operated in this State. [2013, c. 70, Pt. C, §26 (AMD).]

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 1999, c. 386, §W22 (AMD). 2013, c. 70, Pt. C, §26 (AMD).

§15112. CONDEMNED VESSELS STAMPED

A boiler or pressure vessel condemned in this State must be stamped "XXX Me.," and the chief inspector must immediately be notified of the condemnation. [2013, c. 70, Pt. C, §27 (AMD).]

The stamp "XXX Me." placed on condemned boilers must be made across the registration mark or number of the boiler, or if the boiler has no registration mark or number, a stamp must be placed in the location of this mark as determined by the rules of the code. [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

The stamping must be done with individual letters, driven into the plate so far as to thoroughly cancel any previous registration and must be made with letters at least 3/8 of an inch high. [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

The laws and regulations of the code must be used in all mathematical computations necessary to determine the safety of a boiler. [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 2013, c. 70, Pt. C, §27 (AMD).

§15113. REGISTRATION; STAMPING

A boiler, except one exempt under section 15102, may not be operated in this State unless the boiler is registered in the office of the director upon blanks to be furnished by the director upon request. The completed blanks must contain information regarding maker's name, type of construction, date of construction, age, location and when last inspected and other information as may be required. [2013, c. 70, Pt. C, §28 (AMD).]

A pressure vessel, except those exempt under section 15102, may not be installed and operated in this State after June 30, 1974, unless it is constructed, inspected and stamped in conformity with Section VIII of the code and is registered with and approved by the director. [2013, c. 70, Pt. C, §28 (AMD).]

The director may conduct shop inspections. The shop shall pay the required fee for the inspection. [2013, c. 70, Pt. C, §28 (AMD).]

A pressure vessel that does not bear the code stamping may be registered with and approved by the director, if the person desiring to install the vessel makes application to the director and files a copy of the manufacturer's data report or a copy of the construction details together with material specifications for review and approval prior to installation. [2013, c. 70, Pt. C, §28 (AMD).]

After a boiler or pressure vessel has been registered with the director, the director shall furnish and the owner or user shall stamp or have stamped a number as given, on the shell of the boiler in the space commonly used for such purposes, with letters and figures not less than 3/8 of an inch high. [2013, c. 70, Pt. C, §28 (AMD).]

If a boiler or pressure vessel subject to this section is moved from one location to another, notice must be given the director of the removal and of the new location in which the boiler or pressure vessel is to be set up. [2013, c. 70, Pt. C, §28 (AMD).]

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 1999, c. 386, §W23 (AMD). 2001, c. 323, §42 (AMD). 2013, c. 70, Pt. C, §28 (AMD).

§15114. CERTIFICATE REQUIRED

It is unlawful for any person, firm, partnership or corporation to operate under pressure in this State a boiler or pressure vessel to which this chapter applies without a valid inspection certificate as provided in this chapter. The operation of a boiler or pressure vessel without an inspection certificate constitutes a Class E crime on the part of the owner or user of the boiler or pressure vessel and is punishable by a fine of not more than $100 or by imprisonment for not more than 30 days, or by both. [1999, c. 386, Pt. W, §24 (AMD).]

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 1999, c. 386, §W24 (AMD).

§15115. TEMPORARY CERTIFICATE

If an emergency affecting public safety and welfare exists, the chief inspector may issue a temporary inspection certificate for a period not exceeding 6 months after an inspection certificate has expired. A temporary inspection certificate may be issued without an internal inspection being made. If the boiler or pressure vessel is insured, the temporary inspection certificate may not be issued until recommended in writing by the authorized inspector of the company insuring the boiler or pressure vessel and by the chief inspector or one of the deputies; or, if the boiler or pressure vessel is not insured, the temporary inspection certificate must be recommended in writing by at least 2 authorized state inspectors. The provisions as to posting of the inspection certificate apply to the temporary inspection certificate. [2013, c. 70, Pt. C, §29 (AMD).]

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 1999, c. 386, §W25 (AMD). 2013, c. 70, Pt. C, §29 (AMD).

§15116. INSURANCE

When a boiler or pressure vessel is insured and inspected by a duly accredited insurance company licensed to do business in this State, a copy of the record of each certificate inspection of the boiler or pressure vessel must be filed with the director. [2013, c. 70, Pt. C, §30 (AMD).]

When an insurance company cancels insurance upon any boiler or pressure vessel requiring inspection under section 15117 that is not exempt under section 15102 or the policy expires and is not renewed, notice must immediately be given to the director. An insurance company shall notify the director immediately upon insuring a boiler or pressure vessel pursuant to this section. [2013, c. 70, Pt. C, §30 (AMD).]

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 1999, c. 386, §W26 (AMD). 1999, c. 687, §E15 (AMD). 2013, c. 70, Pt. C, §30 (AMD).

§15117. INSPECTION REQUIRED; CERTIFICATES ISSUED

Each boiler or pressure vessel used or proposed for use within this State, except boilers or pressure vessels exempt under section 15102, must be thoroughly inspected by the chief inspector, a deputy inspector or an authorized inspector as to its design, construction, installation, condition and operation. When any boiler or pressure vessel inspected as specified by the director is found to be suitable and to conform to the rules of the director, the chief inspector shall issue to the owner or user of that boiler or pressure vessel, upon payment of a fee to the director, an inspection certificate for each boiler or pressure vessel. The fee under section 15104-C must be set by the director. Inspection certificates must specify the maximum pressure that the boiler or pressure vessel inspected is allowed to carry. The inspection certificate may be valid for not more than 14 months from the date of inspection in the case of boilers and 38 months from the date of inspection in the case of pressure vessels and must be posted under glass in the engine or boiler room containing the boiler or pressure vessel or an engine operated by it or, in the case of a portable boiler, in the office of the plant where it is temporarily located. [2013, c. 70, Pt. C, §31 (AMD).]

In accordance with the provisions of the Maine Administrative Procedure Act, the chief inspector or any deputy inspector may at any time suspend an inspection certificate when, in the inspector's opinion, the boiler or pressure vessel for which it was issued may not continue to be operated without menace to the public safety. An authorized inspector has corresponding powers with respect to inspection certificates for boilers and pressure vessels insured by the company employing the inspector. [2013, c. 70, Pt. C, §31 (AMD).]

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 1999, c. 386, §W27 (AMD). 1999, c. 687, §E16 (AMD). 2001, c. 323, §43 (AMD). 2001, c. 573, §A5 (AMD). 2007, c. 695, Pt. B, §22 (AMD). 2013, c. 70, Pt. C, §31 (AMD).

§15118. INSPECTION CHARGE

The owner or user of each boiler or pressure vessel required by this chapter to be inspected by the chief inspector or a deputy inspector shall pay an inspection fee or fees as set under section 15104-C. Not more than one inspection fee may be collected for the inspection of any one boiler or pressure vessel made in any one year, unless additional inspections are required by the owners or users of the boiler or pressure vessel or unless the boiler or pressure vessel has been inspected and an inspection certificate has been refused, withheld or withdrawn or unless an additional inspection is required because of the change of location of a stationary boiler or pressure vessel. [2013, c. 70, Pt. C, §32 (AMD).]

The fees for additional inspections required by the code must be paid by the boiler owner or contractor and those fees must include the wages and expenses of the inspector. [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 1999, c. 386, §W28 (AMD). 2001, c. 323, §44 (AMD). 2007, c. 402, Pt. MM, §16 (AMD). 2013, c. 70, Pt. C, §32 (AMD).

§15119. POWERS OF CHIEF INSPECTOR

The chief inspector may: [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

1. **Free access to premises.** Have free access for the chief inspector or a deputy or deputy inspectors during reasonable hours to any premises in the State where a boiler or pressure vessel is built or where a boiler or pressure vessel or power plant apparatus is being installed or operated, for the purpose of ascertaining whether the boiler or pressure vessel is built, installed and operated in accordance with this chapter;

[1999, c. 386, Pt. W, §29 (AMD) .]

2. **Inspection certificates.** Issue, suspend and revoke inspection certificates allowing boilers or pressure vessels to be operated, as provided in sections 15115 and 15117, and as provided in the Maine Administrative Procedure Act;

[2001, c. 573, Pt. A, §6 (AMD) .]

3. **Enforce laws and rules.** Enforce the laws of the State governing the use of boilers and pressure vessels and enforce the rules of the director; and

[2013, c. 70, Pt. C, §33 (AMD) .]

4. **Examinations and certificates of competency.**

[1999, c. 386, Pt. W, §29 (RP) .]

5. **Order uninspected or unrepaired boilers and pressure vessels out of service.** In addition to the chief inspector's powers under section 15117, order that a boiler or pressure vessel be taken out of service if an inspection report is not submitted to the chief inspector as required by section 15121, subsection 1, if the inspection certificate fee is not submitted as required by section 15121, subsection 2 or if the owner fails to make repairs as required by the chief inspector.

[2013, c. 70, Pt. C, §34 (AMD) .]

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 1999, c. 386, §W29 (AMD). 2001, c. 573, §§A6,7 (AMD). 2013, c. 70, Pt. C, §§33, 34 (AMD).

§15120. AUTHORIZED INSPECTORS

1. **Issue license.** The director shall, upon the request of an individual who works for a company authorized to insure against loss from explosion of boilers or pressure vessels in this State, issue to the boiler inspector of the company a license to inspect boilers and pressure vessels as an authorized inspector, upon payment of the fee as set under section 15104-C, if the boiler inspector has satisfactorily met the examination and other requirements as specified by this section and rule. The boiler inspector must have a current commission issued by the National Board of Boiler and Pressure Vessel Inspectors, or its successor.

[2013, c. 70, Pt. C, §35 (NEW) .]

2. **Not entitled to compensation by State.** Authorized inspectors are not entitled to receive a salary from, nor may any of their expenses be paid by, the State.

[2013, c. 70, Pt. C, §35 (NEW) .]

3. **Conditions.** The continuance of an authorized inspector's license is conditioned upon the authorized inspector continuing in the employ of a boiler inspection and insurance company duly authorized and upon maintenance of the standards imposed by this chapter.

[2013, c. 70, Pt. C, §35 (NEW) .]

4. **Exempt from fees.** Authorized inspectors shall inspect all boilers and pressure vessels insured by their respective companies, and the owners or users of those insured boilers are exempt from the payment of the fees provided for in section 15118.

[2013, c. 70, Pt. C, §35 (NEW) .]

5. **Additional inspections authorized.** Authorized inspectors may, with the permission of the chief inspector, also inspect boilers and pressure vessels for which an application for insurance against loss from explosion of boilers or pressure vessels has been made or when a new boiler or pressure vessel is installed at an insured location and the prospective insured owner or user is exempt from the payment of fees provided for in section 15118.

[2013, c. 70, Pt. C, §35 (NEW) .]

6. **Report to chief inspector.** Each company employing authorized inspectors shall, within 30 days following each certificate inspection made by the inspectors, file a report of the inspection with the chief inspector.

[2013, c. 70, Pt. C, §35 (NEW) .]

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 1999, c. 386, §W30 (AMD). 1999, c. 687, §E17 (AMD). 2001, c. 573, §A8 (AMD). 2007, c. 402, Pt. MM, §17 (AMD). 2013, c. 70, Pt. C, §35 (RPR).

§15121. DUTIES OF OWNERS OF BOILERS AND PRESSURE VESSELS

1. **Responsibility for inspection.** It is the responsibility of the owner to arrange for an inspection of a boiler or pressure vessel and to prepare the boiler or pressure vessel for inspection. The late inspection fee set by the director under section 15104-C may be assessed against the owner if an inspection report is not submitted within 60 days of the expiration of the most recent inspection certificate.

[2013, c. 70, Pt. C, §36 (AMD) .]

2. **Obtain inspection certificate.** The owner of a boiler or pressure vessel shall submit the inspection certificate fee as set under section 15104-C within 60 days of notification from the director that the inspection report required under section 15120 has been received by the director. Failure to submit the required fee within the 60 days provided may result in the assessment of a late certificate fee as set under section 15104-C.

[2013, c. 70, Pt. C, §36 (AMD) .]

3. **Failure to qualify for inspection certificate.** The owner of a boiler or pressure vessel that does not qualify for an inspection certificate shall take the boiler or pressure vessel out of operation until the required repairs have been made and a new inspection certificate has been issued.

[2001, c. 573, Pt. A, §9 (NEW) .]

4. **Notify director when required repairs made.** The owner of a boiler or pressure vessel shall notify the director when required repairs have been made and provide the director with satisfactory evidence of completion.

[2013, c. 70, Pt. C, §36 (AMD) .]

5. **Notify director when boiler or pressure vessel removed.** The owner of a boiler or pressure vessel shall notify the director within 30 days of the removal of the boiler or pressure vessel.

[2013, c. 70, Pt. C, §36 (AMD) .]

6. **Change of ownership.** The owner of a boiler or pressure vessel shall notify the director of a transfer of ownership within 30 days of such a transfer.

[2013, c. 70, Pt. C, §36 (AMD) .]

7. **Failure to comply.** In addition to the remedies available under this chapter, an owner of a boiler or pressure vessel who fails to comply with the provisions of this chapter or rules adopted by the director is subject to the provisions of Title 10, section 8003, subsection 5 whether or not the boiler or pressure vessel has a current inspection certificate, except that, notwithstanding Title 10, section 8003, subsection 5, paragraph A-1, subparagraph 3, a civil penalty of up to $3,000 may be imposed for each violation.

[2013, c. 70, Pt. C, §36 (AMD) .]

SECTION HISTORY
2001, c. 573, §A9 (NEW). 2007, c. 402, Pt. MM, §§18, 19 (AMD). 2011, c. 286, Pt. B, §5 (REV). 2013, c. 70, Pt. C, §36 (AMD).

Chapter 133: ELEVATOR AND TRAMWAY SAFETY

§15201. DECLARATION OF POLICY

It is the policy of the State to protect its citizens and visitors from unnecessary mechanical hazards in the operation of elevators and tramways and to ensure that reasonable design and construction are used, that accepted safety devices and sufficient personnel are provided and that periodic maintenance, inspections and adjustments considered essential for the safe operation of elevators and tramways are made. The responsibility for design, construction, maintenance and inspection rests with the firm, person, partnership, association, corporation or company that owns elevators or tramways. [2001, c. 573, Pt. B, §1 (AMD); 2001, c. 573, Pt. B, §36 (AFF).]

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 2001, c. 573, §B1 (AMD). 2001, c. 573, §B36 (AFF).

§15202. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

1. **Approved.**

[2013, c. 70, Pt. D, §1 (RP) .]

2. **Board.**

[2013, c. 70, Pt. D, §2 (RP) .]

2-A. **Chief inspector.** "Chief inspector" means an individual in the employ of the State whose duties include the examination and inspection of elevators and tramways and who has been designated as chief inspector by the Commissioner of Professional and Financial Regulation.

[2001, c. 573, Pt. B, §2 (NEW); 2001, c. 573, Pt. B, §36 (AFF) .]

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

[1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF) .]

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

[1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF) .]

4-A. **Deputy inspector.** "Deputy inspector" means an individual in the employ of the State whose duties include the examination and inspection of elevators and tramways under the direction of the chief inspector.

[2001, c. 573, Pt. B, §2 (NEW); 2001, c. 573, Pt. B, §36 (AFF) .]

4-B. **Direct supervision.** "Direct supervision" means that a helper is working in the presence of a licensed elevator or lift mechanic at all times.

[2001, c. 573, Pt. B, §2 (NEW); 2001, c. 573, Pt. B, §36 (AFF) .]

4-C. **Director.** "Director" means the Director of the Office of Professional and Occupational Regulation within the department.

[2013, c. 70, Pt. D, §3 (AMD) .]

5. **Elevator.** "Elevator" includes an escalator or a manlift and means a guided hoisting and lowering mechanism equipped with a car, platform or load-carrying unit, including doors, well, enclosures, means and appurtenances. "Elevator" does not include an inclined stairway chairlift, a conveyor, chain or bucket hoist or a tiering, piling or feeding device. For the purposes of this subsection, "inclined stairway chairlift" means a mechanized chair apparatus running on a track or rail along the side of a staircase.

[2003, c. 292, §1 (AMD) .]

5-A. **Elevator contractor.** "Elevator contractor" means any person, firm, partnership, association, corporation or company engaged in the installation, sale, service, maintenance or inspection of elevators in this State.

[2001, c. 573, Pt. B, §2 (NEW); 2001, c. 573, Pt. B, §36 (AFF) .]

6. **Escalator.** "Escalator" means a power-driven, inclined and continuous stairway used for raising or lowering passengers.

[1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF) .]

7. **Freight elevator.**

[2001, c. 573, Pt. B, §36 (AFF); 2001, c. 573, Pt. B, §3 (RP) .]

7-A. **Helper.** "Helper" means a person who is not licensed under this chapter as an elevator mechanic or lift mechanic and who assists in the installation, service or maintenance of elevators located in this State while working under the direct supervision of a licensed elevator mechanic or licensed lift mechanic.

[2001, c. 573, Pt. B, §4 (NEW); 2001, c. 573, Pt. B, §36 (AFF) .]

7-B. **Licensed private elevator inspector.** "Licensed private elevator inspector" or "licensed private elevator and lift inspector" means an individual who has been licensed by the director to inspect elevators pursuant to this chapter and who is not a state employee whose duty is to inspect elevators.

[2013, c. 70, Pt. D, §4 (AMD) .]

8. **Licensed private tramway inspector.** "Licensed private tramway inspector" means an individual who has been licensed by the director to inspect tramways pursuant to this chapter and who is not a state employee whose duty is to inspect tramways.

[2013, c. 70, Pt. D, §5 (AMD) .]

9. **Manlift.** "Manlift" means a device, consisting of a power-driven, endless belt or chains, provided with steps or platforms and handholds attached to it for the transportation of personnel from floor to floor.

[1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF) .]

10. **Operator.** "Operator" means the person or persons who physically operate an elevator or tramway.

[1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF) .]

11. **Owner.** "Owner" means a firm, person, partnership, association, corporation or state or political subdivision that owns an elevator or tramway.

[1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF) .]

12. **Passenger elevator.**

[2001, c. 573, Pt. B, §6 (RP) .]

13. **Physically handicapped person.** "Physically handicapped person" means a person who has a physiological disability, infirmity, malformation, disfigurement or condition that eliminates or severely limits the person's ability to have access to the person's environment by normal ambulatory function, necessitating the use of crutches, a wheelchair or other similar device for locomotion.

[1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF) .]

14. **Skier.** "Skier" means any person who engages in any of the activities described in section 15217, subsection 1, paragraph B.

[2007, c. 287, §1 (AMD) .]

15. **Ski area.** "Ski area" means the ski slopes and trails, adjoining skiable terrain, areas designated by the ski area operator to be used for skiing as defined by section 15217, subsection 1, paragraph B and passenger tramways administered or operated as a single enterprise within this State.

[2007, c. 287, §2 (AMD) .]

16. **Ski industry.** "Ski industry" means the activities of all ski area operators.

[1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF) .]

17. **Ski area operator.** "Ski area operator" means a person or organization having operational responsibility for a ski area, including an agency or a political subdivision of this State.

[1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF) .]

18. **State inspector.**

[2001, c. 573, Pt. B, §36 (AFF); 2001, c. 573, Pt. B, §8 (RP) .]

19. **Tramway.** "Tramway" means a device used to transport passengers uphill on skis or in cars on tracks or suspended in the air by the use of steel cables, chains or belts or by ropes usually supported by trestles or towers with one or more spans. "Tramway" includes the following:

A. Reversible aerial tramways, which are that class of aerial passenger tramways and lifts by which passengers are transported in carriers and are not in contact with the ground or snow surface, and in which the carriers reciprocate between terminals. This class includes:

(1) Single-reversible tramways, which are a type of reversible lift or aerial tramway having a single carrier, or single group of carriers, that moves back and forth between terminals on a single path of travel, sometimes called "to-and-fro" aerial tramways; and

(2) Double-reversible tramways, which are a type of reversible lift or aerial tramway having 2 carriers, or 2 groups of carriers, that oscillate back and forth between terminals on 2 separate paths of travel, sometimes called "jig-back" aerial tramways; [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

B. Aerial lifts and skimobiles, which are that class of aerial passenger tramways and lifts by which passengers are transported in carriers and are not in contact with the ground or snow surface, and in which the carriers circulate around a closed system and are activated by a wire rope or chain. The carriers usually make U-turns in the terminals and move along parallel and opposing paths of travel. The carriers may be open or enclosed cabins, chairs, cars or platforms. The carriers may be fixed or detachable. This class includes:

(1) Gondola lifts, which are a type of lift or aerial tramway by which passengers are transported in open or enclosed cabins. The passengers embark and disembark while the carriers are stationary or moving slowly under a controlled arrangement;

(2) Chair lifts, which are a type of lift or aerial tramway by which passengers are transported in chairs, either open or partially enclosed; and

(3) Skimobiles, which are a type of lift or aerial tramway by which passengers are transported in open or enclosed cars that ride on a rigid structural system and are propelled by a wire rope or chain; [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

C. Surface lifts, which are that class of conveyance by which passengers are propelled by means of a circulating overhead wire rope while remaining in contact with the ground or snow surface. Transportation is limited to one direction. Connection between the passengers and the wire rope is by means of a device attached to and circulating with the haul rope known as a "towing outfit." This class includes:

(1) T-bar lifts, which are a type of lift in which the device between the haul rope and passengers forms the shape of an inverted "T," propelling passengers located on both sides of the stem of the "T";

(2) J-bar lifts, which are a type of lift in which the device between the haul rope and passenger is in the general form of a "J," propelling a single passenger located on the one side of the stem of the "J"; and

(3) Platter lifts, which are a type of lift in which the device between the haul rope and passenger is a single stem with a platter or disk, attached to the lower end of the stem, propelling the passenger astride the stem of the platter or disk; [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

D. Tows, which are that class of conveyance in which passengers grasp a circulating haul rope, which may be natural or synthetic fiber or metallic, or a handle or gripping device attached to the circulating haul rope, and are propelled by the circulating haul rope. The passengers remain in contact with the ground or snow surface. The upward-traveling haul rope remains adjacent to the uphill track at an elevation that permits the passengers to maintain their grasp on the haul rope, handle or gripping device throughout the portion of the tow length that is designed to be traveled; and [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

E. Similar equipment not specified in this subsection, but conforming to at least one of the general descriptions in this subsection. [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

[1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF) .]

20. **Tramway passenger.** "Tramway passenger" means a person being transported or conveyed by a tramway, waiting in the immediate vicinity for transportation or conveyance by a tramway, moving away from the disembarkation or unloading point of a tramway to clear the way for the following passengers or boarding, embarking upon or disembarking from a tramway.

[1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF) .]

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 1999, c. 386, §X2 (AMD). 2001, c. 573, §§B2-8 (AMD). 2001, c. 573, §B36 (AFF). 2003, c. 292, §1 (AMD). 2007, c. 287, §§1, 2 (AMD). 2011, c. 286, Pt. B, §5 (REV). 2013, c. 70, Pt. D, §§1-5 (AMD).

§15203. RETROACTIVE EFFECT; EXCEPTION

This chapter may not be construed to prevent the use or sale of elevators in this State that were being used or installed prior to January 1, 1950 and that have been made to conform to the rules of the director covering existing installations and must be inspected as provided for in this chapter. [2013, c. 70, Pt. D, §6 (AMD).]

This chapter does not apply to elevators or tramways on reservations of the Federal Government, to elevators used for agricultural purposes on farms or to elevators located or maintained in private residences, as long as they are exclusively for private use. [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 2001, c. 573, §B9 (AMD). 2001, c. 573, §B36 (AFF). 2013, c. 70, Pt. D, §6 (AMD).

§15204. APPEALS; VARIANCES

A person aggrieved by an order or act of the chief inspector or a deputy inspector under this chapter may, within 15 days after notice of the order or act, appeal from the order or act to the director, who shall hold a hearing pursuant to Title 5, chapter 375, subchapter 4. After the hearing, the director shall issue an appropriate order either approving or disapproving the order or act. [2013, c. 70, Pt. D, §7 (AMD).]

Any person who is or will be aggrieved by the application of any law, code or rule relating to the installation or alteration of elevators or tramways may file a petition for a variance, whether compliance with that provision is required at the time of filing or at the time that provision becomes effective. The filing fee for a petition for a variance must be set by the director under section 15225-A. The chief inspector may grant a variance if, owing to conditions especially affecting the particular building or installation involved, the enforcement of any law, code or rule relating to elevators or tramways would do manifest injustice or cause substantial hardship, financial or otherwise, to the petitioner or any occupant of the petitioner's building or would be unreasonable under the circumstances or condition of the property, provided that desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of that law, code or rule. In granting a variance under this section, the chief inspector may impose limitations both of time and of use, and a continuation of the use permitted may be conditioned upon compliance with rules made and amended from time to time. A copy of the decision must be sent to all interested parties. [2001, c. 573, Pt. B, §10 (AMD); 2001, c. 573, Pt. B, §36 (AFF).]

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 1999, c. 386, §X3 (AMD). 2001, c. 573, §B10 (AMD). 2001, c. 573, §B36 (AFF). 2013, c. 70, Pt. D, §7 (AMD).

§15205. BOARD OF ELEVATOR AND TRAMWAY SAFETY

(REPEALED)

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 1999, c. 386, §§X4,5 (AMD). 2007, c. 402, Pt. NN, §1 (AMD). 2013, c. 70, Pt. D, §8 (RP).

§15205-A. DIRECTOR'S POWERS AND DUTIES

1. **Regulation.** The director shall administer, coordinate and enforce this chapter. The director may appoint an advisory committee to assist the director on any matter that may arise under this chapter, as needed.

[2013, c. 70, Pt. D, §9 (NEW) .]

2. **Rule-making authority.** The director shall establish guidelines and adopt rules necessary for the proper administration and enforcement of this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. The rules must address, but are not limited to:

A. Requirements for the safe and proper construction, installation, alteration, repair, use, operation and inspection of elevators and tramways in this State. The rules must include standards for the review and audit of inspections performed by licensed private elevator inspectors not employed by the State. The rules must conform as nearly as practicable to the established standards as approved by the American National Standards Institute or its successor or other organization approved by the director; [2013, c. 70, Pt. D, §9 (NEW).]

B. Requirements for licensure and renewal of private elevator and lift inspectors, including requirements for examination and continuing education; and [2013, c. 70, Pt. D, §9 (NEW).]

C. Requirements for licensure and renewal of elevator and lift mechanics, including requirements for examination and continuing education. [2013, c. 70, Pt. D, §9 (NEW).]

[2013, c. 70, Pt. D, §9 (NEW) .]

SECTION HISTORY
2013, c. 70, Pt. D, §9 (NEW).

§15206. POWERS AND DUTIES OF BOARD

(REPEALED)

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 1999, c. 386, §X6 (RPR). 2001, c. 573, §B11 (AMD). 2001, c. 573, §B36 (AFF). 2007, c. 402, Pt. NN, §2 (AMD). 2013, c. 70, Pt. D, §10 (RP).

§15206-A. DENIAL OR REFUSAL TO RENEW LICENSE; DISCIPLINARY ACTION

1. **Investigations.**

[2007, c. 402, Pt. NN, §3 (RP) .]

2. Suspension; revocation.

[2007, c. 402, Pt. NN, §3 (RP) .]

The director may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A for any of the reasons enumerated in Title 10, section 8003, subsection 5-A, paragraph A. [2013, c. 70, Pt. D, §11 (AMD).]

SECTION HISTORY
1999, c. 386, §X7 (NEW). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2001, c. 573, §B12 (AMD). 2001, c. 573, §B36 (AFF). 2007, c. 402, Pt. NN, §3 (RPR). 2013, c. 70, Pt. D, §11 (AMD).

§15207. APPOINTMENT OF STATE INSPECTORS

(REPEALED)

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 1999, c. 687, §F11 (RP).

§15208. EXAMINATION OF PRIVATE ELEVATOR AND LIFT INSPECTORS; LICENSES AND RENEWALS

The director shall set standards necessary for the licensure and renewal of private elevator and lift inspectors. The fee for applications, examinations, licenses and renewals must be established by the director pursuant to section 15225-A and Title 10, section 8003, subsection 2-A, paragraph D. [2013, c. 70, Pt. D, §12 (AMD).]

An elevator contractor or a person who is licensed as a private elevator and lift inspector who services an elevator or lift equipment may not inspect that elevator or lift equipment within 12 months from the date of servicing that elevator or lift equipment. [2001, c. 573, Pt. B, §36 (AFF); 2001, c. 573, Pt. B, §13 (RPR).]

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 1999, c. 386, §X8 (AMD). 1999, c. 627, §1 (AMD). 2001, c. 573, §B36 (AFF). 2001, c. 573, §B13 (RPR). 2013, c. 70, Pt. D, §12 (AMD).

§15208-A. REGISTRATION OF ELEVATOR CONTRACTORS

Any person, firm, partnership, association, corporation or company engaged in the installation, sale, service, maintenance or inspection of elevators in this State shall register with the director. The registration must be submitted on a form provided by the director and must include the names and addresses of all licensed private inspectors, licensed mechanics and all helpers employed by the elevator contractor. An elevator contractor shall notify the director of any change in the information required under this section within 30 days of the change. The required fee for registration must be set by the director under section 15225-A. [2013, c. 70, Pt. D, §13 (AMD).]

SECTION HISTORY
2001, c. 573, §B14 (NEW). 2001, c. 573, §B36 (AFF). 2013, c. 70, Pt. D, §13 (AMD).

§15209. EXAMINATION OF PRIVATE TRAMWAY INSPECTORS; LICENSES

The director shall license an applicant as a private tramway inspector, who may perform the inspections required on tramways, if that applicant: [2013, c. 70, Pt. D, §14 (AMD).]

1. **Registration.** Is a professional engineer with a current valid registration in some state. If an applicant for a private tramway inspector's license demonstrates to the director that the applicant possesses more than 6 years' experience in the construction, design, inspection and operation of tramways, this registration requirement may be waived by the director;

[2013, c. 70, Pt. D, §15 (AMD) .]

2. **Experience.** Has considerable experience in the construction, design or maintenance of tramways;

[1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF) .]

3. **Experience in inspecting.** Has 4 years' experience inspecting tramways while working for an insurance company, a government agency or a company performing tramway or similar equipment inspections;

[1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF) .]

4. **Capability and aptitude.** Has the physical capability and aptitude to perform the duties of a private tramway inspector in a safe and thorough manner; and

[2001, c. 573, Pt. B, §15 (AMD); 2001, c. 573, Pt. B, §36 (AFF) .]

5. **Examination.** Has sufficient experience and knowledge to achieve a satisfactory rating in an examination designed to test the applicant's knowledge of orders and principles of tramway safety. When an applicant for a private tramway inspector's license demonstrates more than 6 years' experience in the construction, design, inspection and operation of tramways, the provisions for examination may be waived.

A. The examination must be confined to questions the answers to which will aid in determining the fitness and competency of the applicant for the intended service and must be of uniform standard throughout the State. [2013, c. 70, Pt. D, §16 (AMD).]

B. [2001, c. 573, Pt. B, §36 (AFF); 2001, c. 573, Pt. B, §15 (RP).]

C. A private tramway inspector's license is issued for a period of one year. The license fee must be set by the director under section 15225-A. [2001, c. 573, Pt. B, §15 (AMD); 2001, c. 573, Pt. B, §36 (AFF).]

D. Applications for examination and license must be on forms furnished by the director. The examination fee for a private tramway inspector's license must be set by the director under section 15225-A. [2013, c. 70, Pt. D, §16 (AMD).]

[2013, c. 70, Pt. D, §16 (AMD) .]

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 1999, c. 386, §X9 (AMD). 2001, c. 573, §B15 (AMD). 2001, c. 573, §B36 (AFF). 2013, c. 70, Pt. D, §§14-16 (AMD).

§15209-A. PRIVATE WIRE ROPE INSPECTORS; LICENSES

The director may issue a license to an applicant as a private wire rope inspector, who may perform the inspections required for each tramway equipped with wire rope, if that applicant has a total of 5 years' experience in wire rope manufacture, installation, maintenance or inspection and meets the requirements of

this chapter and rules adopted by the director. A private wire rope inspector's license is issued for a period of one year. The license fee must be set by the director under section 15225-A. [2013, c. 70, Pt. D, §17 (AMD).]

SECTION HISTORY
1999, c. 386, §X10 (NEW). 2001, c. 573, §B16 (AMD). 2001, c. 573, §B36 (AFF). 2013, c. 70, Pt. D, §17 (AMD).

§15210. REVOCATION OF PRIVATE TRAMWAY OR ELEVATOR INSPECTOR'S LICENSE

The director may revoke a private tramway, elevator or lift inspector's license for the following causes: [2013, c. 70, Pt. D, §18 (AMD).]

1. **Failure to submit true reports.** For failure to submit true reports concerning the conditions of a tramway or elevator or for conduct determined by the director to be contrary to the best interests of tramway or elevator safety or the director; and

[2013, c. 70, Pt. D, §18 (AMD) .]

2. **Physical infirmities.** For physical infirmities that develop to a point at which it appears that an inspector is no longer able to perform the required duties in a thorough and safe manner.

[2013, c. 70, Pt. D, §18 (AMD) .]

3. **Failure to comply with chapter or rules.**

[2007, c. 402, Pt. NN, §4 (RP) .]

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 1999, c. 386, §X11 (AMD). 2001, c. 573, §B17 (AMD). 2001, c. 573, §B36 (AFF). 2007, c. 402, Pt. NN, §4 (AMD). 2013, c. 70, Pt. D, §18 (AMD).

§15211. NOTICE OF ACCIDENTS

1. **Reporting accidents.** Each elevator or tramway accident that is caused by equipment failure or results in significant injury to a person or results in substantial damage to equipment must be reported by the owner or lessee to the chief inspector in accordance with the director's rules.

[2013, c. 70, Pt. D, §19 (AMD) .]

2. **Revocation of certificate.** When an elevator or tramway accident as described in subsection 1 occurs, the inspection certificate for the involved elevator or tramway may be summarily revoked in accordance with and subject to the standards and limitations of Title 5, section 10004, pending decision on any application with the District Court for a further suspension.

[2001, c. 573, Pt. B, §18 (NEW); 2001, c. 573, Pt. B, §36 (AFF) .]

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 1999, c. 386, §X12 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2001, c. 573, §B36 (AFF). 2001, c. 573, §B18 (RPR). 2013, c. 70, Pt. D, §19 (AMD).

§15212. EXAMINATION OF ACCIDENTS

The chief inspector may examine or cause to be examined the cause, circumstances and origin of all elevator or tramway accidents within the State. Upon request, the chief inspector shall furnish to the proper district attorney the names of witnesses and all information obtained. [2001, c. 573, Pt. B, §19 (AMD); 2001, c. 573, Pt. B, §36 (AFF).]

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 2001, c. 573, §B19 (AMD). 2001, c. 573, §B36 (AFF).

§15213. ELEVATOR OR LIFT MECHANICS; LICENSE; DEFINITION

A person may not service, repair, alter or install any elevator unless that person is licensed as an elevator or lift mechanic under this chapter. Elevator work in industrial plants and manufacturing plants may be performed by plant personnel who are not licensed under this chapter if the work is supervised by the plant engineer and performed in compliance with rules adopted by the director. [2013, c. 70, Pt. D, §20 (AMD).]

The word "elevator," as used in this chapter, includes all electrical equipment, wiring, steelwork and piping in the elevator machine room, hoistway and pit pertaining to the operation and control of an elevator, except power feeders and required power equipment up to the control panel, heating, lighting, ventilation and drainage equipment. [2001, c. 573, Pt. B, §20 (AMD); 2001, c. 573, Pt. B, §36 (AFF).]

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 1999, c. 386, §X13 (AMD). 2001, c. 573, §B20 (AMD). 2001, c. 573, §B36 (AFF). 2013, c. 70, Pt. D, §20 (AMD).

§15214. ISSUANCE; QUALIFICATIONS

The director shall issue an elevator or lift mechanic's license to any applicant who has at least 2 years' experience in the service, repair, alteration or installation of elevators and lifts while employed by an elevator company, or has equivalent experience as defined by rules of the director, and meets the requirements established pursuant to section 15216. [2013, c. 70, Pt. D, §21 (AMD).]

A licensed elevator or lift mechanic may not have more than 2 helpers under direct supervision. These helpers need not be licensed. [1999, c. 386, Pt. X, §14 (AMD).]

A licensed elevator or lift mechanic shall comply with the provisions of this chapter and the rules adopted by the director. [2013, c. 70, Pt. D, §21 (AMD).]

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 1999, c. 386, §X14 (AMD). 2001, c. 573, §B21 (AMD). 2001, c. 573, §B36 (AFF). 2013, c. 70, Pt. D, §21 (AMD).

§15215. INSPECTOR ENDORSEMENT TO ELEVATOR OR LIFT MECHANIC'S LICENSE

(REPEALED)

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 1999, c. 386, §X15 (AMD). 2001, c. 573, §B36 (AFF). 2001, c. 573, §B22 (RP).

§15216. EXAMINATION OF ELEVATOR OR LIFT MECHANICS; APPLICATIONS; LICENSES; RENEWALS

The director shall set standards necessary for the licensure and renewal of elevator or lift mechanics. The fee for applications, examinations, licenses and renewals must be established by the director pursuant to section 15225-A and Title 10, section 8003, subsection 2-A, paragraph D. Licenses are issued for a period of one year. [2013, c. 70, Pt. D, §22 (AMD).]

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 1999, c. 386, §X16 (AMD). 2001, c. 573, §B36 (AFF). 2001, c. 573, §B23 (RPR). 2013, c. 70, Pt. D, §22 (AMD).

§15216-A. APPLICATION FEE

(REPEALED)

SECTION HISTORY
1999, c. 386, §X17 (NEW). 2001, c. 573, §B36 (AFF). 2001, c. 573, §B24 (RP).

§15216-B. WIRE ROPE INSPECTORS; LICENSES

(REPEALED)

SECTION HISTORY
1999, c. 386, §X17 (NEW). 2001, c. 573, §B36 (AFF). 2001, c. 573, §B24 (RP).

§15216-C. LICENSE RENEWAL

Any license issued under this chapter is renewable upon satisfaction of the applicable requirements for renewal and payment of the renewal fee as set by the director under section 15225-A. The expiration dates for licenses issued under this chapter may be established at such other times as the commissioner may designate. [2007, c. 402, Pt. NN, §5 (AMD).]

A license may be renewed up to 90 days after the date of its expiration upon payment of a late fee in addition to the renewal fee as set under section 15225-A. Any person who submits an application for renewal more than 90 days after the license expiration date must pay an additional late fee as set under section 15225-A and is subject to all requirements governing new applicants under this chapter, except that the director, after giving due consideration to the protection of the public, may waive the examination and other requirements. Notwithstanding any other provision of this chapter, the director shall waive the examination if a renewal application is made within 90 days after separation from the United States Armed Forces, under conditions other than dishonorable, by a person who failed to renew that person's license because that person was on active duty in the Armed Forces; except that the waiver of examination may not be granted if the person served a period of more than 4 years in the Armed Forces, unless that person is required by some mandatory provision to serve a longer period and that person submits satisfactory evidence of this mandatory provision to the director. [2013, c. 70, Pt. D, §23 (AMD).]

SECTION HISTORY
1999, c. 386, §X17 (NEW). 2001, c. 573, §B25 (AMD). 2001, c. 573, §B36 (AFF). 2007, c. 402, Pt. NN, §5 (AMD). 2013, c. 70, Pt. D, §23 (AMD).

§15217. SKIERS' AND TRAMWAY PASSENGERS' RESPONSIBILITIES

1. **Definitions.** As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Inherent risks of skiing" means those dangers or conditions that are an integral part of the sport of skiing, including, but not limited to: existing and changing weather conditions; existing and changing snow conditions, such as ice, hardpack, powder, packed powder, slush and granular, corn, crust, cut-up and machine-made snow; surface or subsurface conditions, such as dirt, grass, bare spots, forest growth, rocks, stumps, trees and other natural objects and collisions with or falls resulting from such natural objects; lift towers, lights, signs, posts, fences, mazes or enclosures, hydrants, water or air pipes, snowmaking and snow-grooming equipment, marked or lit trail maintenance vehicles and snowmobiles, and other man-made structures or objects and their components, and collisions with or falls resulting from such man-made objects; variations in steepness or terrain, whether natural or as a result of slope design; snowmaking or snow-grooming operations, including, but not limited to, freestyle terrain, jumps, roads and catwalks or other terrain modifications; the presence of and collisions with other skiers; and the failure of skiers to ski safely, in control or within their own abilities. [2007, c. 287, §3 (AMD).]

B. "Skiing" means the use of a ski area for snowboarding or downhill, telemark or cross-country skiing; for sliding downhill or jumping on snow or ice on skis, a toboggan, sled, tube, snowboard, snowbike or any other device; or for similar uses of any of the facilities of the ski area, including, but not limited to, ski slopes, trails and adjoining terrain. [2007, c. 287, §3 (AMD).]

C. "Skier" means any person at a ski area who participates in any of the activities described in paragraph B. [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

D. "Competitor" means a skier actually engaged in competition or a special event or training or practicing for competition or a special event on any portion of the ski area made available by the ski area operator. [2007, c. 287, §3 (NEW).]

E. "Freestyle terrain" includes, but is not limited to, terrain parks and terrain park features such as jumps, rails, fun boxes and all other constructed or natural features, halfpipes, quarterpipes and freestyle-bump terrain. [2007, c. 287, §3 (NEW).]

[2007, c. 287, §3 (AMD) .]

2. **Acceptance of inherent risks.** Because skiing as a recreational sport and the use of passenger tramways associated with skiing may be hazardous to skiers or passengers, regardless of all feasible safety measures that may be taken, each person who participates in the sport of skiing accepts, as a matter of law, the risks inherent in the sport and, to that extent, may not maintain an action against or recover from the ski area operator, or its agents, representatives or employees, for any losses, injuries, damages or death that result from the inherent risks of skiing.

[2007, c. 287, §3 (AMD) .]

3. **Warning notice.** A ski area operator shall post and maintain at the ski area where the lift tickets and ski school lessons are sold and at the loading point of each passenger tramway signs that contain the following warning notice:

WARNING:

Under Maine law, a skier assumes the risk of any injury to person or property resulting from any of the inherent dangers and risks of skiing and may not recover from any ski area operator for any injury resulting from any of the inherent dangers and risks of skiing, including, but not limited to: existing and changing weather conditions; existing and changing snow conditions, such as ice, hardpack, powder, packed powder, corn, crust and slush and cut-up, granular and machine-made snow; surface or subsurface conditions, such as dirt, grass, bare spots, rocks, stumps, trees, forest growth or other

natural objects and collisions with such natural objects; lift towers, lights, signs, posts, fences, mazes or enclosures, hydrants, water or air pipes, snowmaking and snow-grooming equipment, marked or lit trail maintenance vehicles and snowmobiles, and other man-made structures or objects; variations in steepness or terrain, whether natural or as a result of slope design, snowmaking or grooming operations, including, but not limited to, freestyle terrain, jumps, roads and catwalks or other terrain modifications; the presence of and collisions with other skiers; and the failure of skiers to ski safely, in control or within their own abilities.

[2007, c. 287, §3 (AMD) .]

4. **Duty to ski within limits of ability.** A skier has the sole responsibility for knowing the range of the skier's own ability to negotiate any slope or ski trail, and it is the duty of the skier to ski within the limits of the skier's own ability, to maintain control of the rate of speed and the course at all times while skiing, to heed all posted and oral warnings and instructions by the ski area operator and to refrain from acting in a manner that may cause or contribute to the injury of the skier or others.

[1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF) .]

4-A. **Competition and freestyle terrain.** A competitor accepts all inherent risks of skiing and all risks of course, venue and area conditions, including, but not limited to: weather and snow conditions; obstacles; course or feature location, construction and layout; freestyle terrain configuration and condition; collision with other competitors; and other courses, layouts and configurations of the area to be used.

[2007, c. 287, §3 (NEW) .]

5. **Responsibility for collisions.** The responsibility for a collision between any skier while skiing and any person or object is solely that of the skier or skiers involved in the collision and not the responsibility of the ski area operator or its agents, representatives or employees.

[1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF) .]

6. **Liability.** A ski area operator or its agents, representatives or employees are not liable for any loss, injury, damage or death resulting from the design of the ski area.

[1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF) .]

7. **Provision of name and current address required.** A skier involved in, causing or contributing to a collision or other accident at a ski area that results in a fall or injury may not leave the vicinity of the collision or accident before giving that skier's name and current address to an employee or representative of the ski area operator or a member of the ski patrol, except for the purpose of securing aid for a person injured in the collision, in which case the person leaving the scene of the collision shall give that skier's name and current address after securing such aid. A ski area operator, or its agents, representatives or employees, is not liable for a skier's failure to provide that skier's name and address or for leaving the vicinity of an accident or collision.

[1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF) .]

8. **Actions not prohibited.** This section does not prevent the maintenance of an action against a ski area operator for:

A. The negligent operation or maintenance of the ski area; or [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

B. The negligent design, construction, operation or maintenance of a passenger tramway. [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

[1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF) .]

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 2007, c. 287, §3 (AMD).

§15218. DUTIES OF SKIERS AND TRAMWAY PASSENGERS; ACTS PROHIBITED

A person engaged in skiing or riding on a tramway may not: [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

1. **Embark or disembark from tramway except as designated.** Embark or disembark from any tramway, except at a designated area;

[1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF) .]

2. **Throw or expel objects from tramway.** While riding on any tramway or similar device, throw or expel any object or do any act or thing that interferes with the running of that tramway;

[1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF) .]

3. **Engage in harmful conduct.** While riding on any tramway, willfully engage in any type of conduct that will contribute to or cause injury to any person, or to the tramway, or willfully place any object in the uphill ski track that will cause injury to any person or cause damage to or derailment of the tramway;

[1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF) .]

4. **Closed trails.** Ski or otherwise use a slope or trail that has been designated "closed" by the operator without written permission of the operator or the operator's designee;

[1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF) .]

5. **Removal or destruction of signs.** Remove, alter, deface or destroy any sign or notice placed in the ski area or on the trail by the operator; or

[1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF) .]

6. **Out-of-bounds areas.** Ski or otherwise use any portion of the ski area that is not a part of a regular network of trails or areas open to the public, including wooded areas between trails, undeveloped areas and all other portions not open to the public, if the operator has properly posted these areas as being closed to public access.

[1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF) .]

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF).

§15219. HANG GLIDING

Hang gliding is also recognized as a hazardous sport. Therefore, a person who is hang gliding is deemed to have assumed the risk and legal responsibility for any injury to the hang glider's person or property in the same manner and to the same extent as skiers under this chapter. [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF).

§15220. PENALTIES

1. **Verbal warning; forfeiture of lift ticket.** Any owner, manager or employee of any ski area, who finds a person in violation of section 15218, may first issue a verbal warning to that individual or suspend the individual's lift use privileges. Any person who fails to heed the warning issued by the ski area owner, manager or employee shall forfeit the ski lift ticket and ski lift use privileges and must be refused issuance of another lift ticket and is liable for any damages to the tramway and its incidental equipment that have been caused by the individual's misconduct.

[1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF) .]

2. **Cost of rescue operation.** When it is necessary to commence a rescue operation as a result of a violation of section 15218, subsection 6, any person who has committed the violation is liable for the cost of that rescue operation.

[1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AMD) .]

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF).

§15221. INSPECTION OF ELEVATORS AND TRAMWAYS

1. **Fees; inspection certificate.** Each elevator or tramway proposed to be used within this State must be thoroughly inspected by either the chief inspector, a deputy inspector or a licensed private elevator or tramway inspector and, if found to conform to the rules of the director, the director shall issue to the owner an inspection certificate. Fees for inspection and certification of elevators and tramways must be set by the director under section 15225-A and must be paid by the owner of the elevator or tramway. The certificate must specify the maximum load to which the elevator or tramway may be subjected, the date of its issuance and the date of its expiration. The elevator certificate must be posted in the elevator and the tramway certificate at a conspicuous place in the machine area.

[2013, c. 70, Pt. D, §24 (AMD) .]

2. **Scheduled inspections.** The owner of an elevator shall have the elevator inspected annually by a licensed private elevator inspector, the chief inspector or a deputy inspector. The owner of a tramway shall have the tramway inspected by a licensed private tramway inspector, the chief inspector or a deputy inspector twice each year. One tramway inspection must be made when weather conditions permit a complete inspection of all stationary and moving parts. The 2nd tramway inspection must be made while the tramway is in operation.

[2001, c. 573, Pt. B, §26 (AMD); 2001, c. 573, Pt. B, §36 (AFF) .]

3. **Temporary suspension of inspection certificate; condemnation card.** When, in the inspector's opinion, the elevator or tramway can not continue to be operated without menace to the public safety, the chief inspector or deputy inspector may temporarily suspend an inspection certificate in accordance with Title 5, section 10004 and post or direct the posting of a red card of condemnation at every entrance to the elevator or tramway. The condemnation card is a warning to the public and must be of such type and dimensions as the director determines. The suspension continues, pending decision on any application with the District Court for a further suspension. The condemnation card may be removed only by the inspector posting it or by the chief inspector.

[2013, c. 70, Pt. D, §25 (AMD) .]

4. **Special certificate; special conditions.** When, upon inspection, an elevator or tramway is found by the inspector to be in reasonably safe condition but not in full compliance with the rules of the director, the inspector shall certify to the chief inspector the inspector's findings and the chief inspector may issue a special certificate, to be posted as required in this section. This certificate must set forth any special conditions under which the elevator or tramway may be operated.

[2013, c. 70, Pt. D, §26 (AMD) .]

5. **Inspection reports.** Licensed private tramway and elevator inspectors shall submit inspection reports to the owner on a form provided by the director within 15 working days from the date of the inspection.

[2013, c. 70, Pt. D, §27 (AMD) .]

6. **Follow-up inspections.** All follow-up inspections necessary to enforce compliance must be performed by either the chief inspector or a deputy inspector. A fee set by the director under section 15225-A must be charged for those follow-up inspections.

[2001, c. 573, Pt. B, §26 (AMD); 2001, c. 573, Pt. B, §36 (AFF) .]

7. **Certificate not transferable.** An inspection certificate may not be transferred to any other person, firm, corporation or association. If ownership of an elevator or tramway is transferred, the new owner must apply for a new inspection certificate as required by section 15229, subsection 7.

[2001, c. 573, Pt. B, §26 (NEW); 2001, c. 573, Pt. B, §36 (AFF) .]

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 1999, c. 386, §X18 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2001, c. 573, §B26 (AMD). 2001, c. 573, §B36 (AFF). 2013, c. 70, Pt. D, §§24-27 (AMD).

§15222. CONDEMNED ELEVATORS AND TRAMWAYS NOT TO BE OPERATED

An elevator or tramway that has been condemned under section 15221 may not be operated in this State. Any person who owns or operates or causes to be operated for other than repair or corrective purposes an elevator or tramway in violation of this section commits a Class E crime and must be punished by a fine of not more than $500 or by imprisonment for not more than 6 months, or by both. [1995, c. 560, Pt. H, §14 (NEW); 1995, c. 560, Pt. H, §17 (AFF).]

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF).

§15223. CRIMINAL OPERATION OF ELEVATOR OR TRAMWAY

1. **Prohibition.** An owner of an elevator or tramway is guilty of criminal operation of an elevator or tramway if that owner operates that elevator or tramway without a current and valid inspection certificate.

[2001, c. 573, Pt. B, §27 (NEW); 2001, c. 573, Pt. B, §36 (AFF) .]

2. **Strict liability.** Criminal operation of an elevator or tramway is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

[2001, c. 573, Pt. B, §27 (NEW); 2001, c. 573, Pt. B, §36 (AFF) .]

3. **Specific number of days of criminal operation.** Each day of criminal operation does not constitute a separate crime.

[2001, c. 573, Pt. B, §27 (NEW); 2001, c. 573, Pt. B, §36 (AFF) .]

4. **Class of crime; enhanced fine.** Criminal operation of an elevator or tramway is a Class E crime. However, notwithstanding Title 17-A, section 1301, subsection 1-A, paragraph E or Title 17-A, section 1301, subsection 3, paragraph E, the court may impose an enhanced fine. The fine amount above that authorized under Title 17-A, section 1301 is based solely on the number of days of criminal operation pleaded and proved by the State. For each day of criminal operation pleaded and proved, the court may increase the fine amount by up to $100 for each of those days.

[2001, c. 573, Pt. B, §27 (NEW); 2001, c. 573, Pt. B, §36 (AFF) .]

5. **Imposition of sentence without enhanced fine.** Nothing in subsection 3 or 4 may be construed to restrict a court, in imposing any authorized sentencing alternative, including a fine in an amount authorized under Title 17-A, section 1301, subsection 1-A, paragraph E or Title 17-A, section 1301, subsection 3, paragraph E, from considering the number of days of illegal operation, along with any other relevant sentencing factor, which need not be pleaded or proved by the State.

[2001, c. 573, Pt. B, §27 (NEW); 2001, c. 573, Pt. B, §36 (AFF) .]

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 2001, c. 573, §B36 (AFF). 2001, c. 573, §B27 (RPR).

§15224. INSTALLATION OF NEW ELEVATORS AND TRAMWAYS; FEES

Detailed plans or specifications of each new or altered elevator or tramway must be submitted to and approved by the chief inspector before the construction may be started. Fees for examination of the plans or specifications must be set by the director under section 15225-A. [2001, c. 573, Pt. B, §28 (AMD); 2001, c. 573, Pt. B, §36 (AFF).]

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 1999, c. 386, §X19 (AMD). 2001, c. 573, §B28 (AMD). 2001, c. 573, §B36 (AFF).

§15225. INSPECTION FEES

(REPEALED)

SECTION HISTORY

1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 1999, c. 386, §X20 (AMD). 2001, c. 573, §B36 (AFF). 2001, c. 573, §B29 (RP).

§15225-A. FEES

The director may establish by rule fees for purposes authorized under this chapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for any one purpose other than permit and inspection fees may not exceed $500. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2013, c. 70, Pt. D, §28 (AMD).]

SECTION HISTORY
2001, c. 573, §B30 (NEW). 2001, c. 573, §B36 (AFF). 2007, c. 402, Pt. NN, §6 (RPR). 2011, c. 286, Pt. B, §5 (REV). 2013, c. 70, Pt. D, §28 (AMD).

§15226. REPORTS BY INSPECTORS

A deputy inspector or licensed private inspector shall make a full report to the chief inspector, giving all data required by the rules adopted by the director and shall report to the chief inspector and to the owner all defects found and all noncompliances with the rules. When any serious infraction of the rules is found by a deputy inspector or licensed private inspector and that infraction is, in the opinion of the inspector, dangerous to life, limb or property, the inspector shall report that infraction immediately to the chief inspector. [2013, c. 70, Pt. D, §29 (AMD).]

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 1999, c. 386, §X21 (AMD). 2001, c. 573, §B31 (AMD). 2001, c. 573, §B36 (AFF). 2013, c. 70, Pt. D, §29 (AMD).

§15227. POWERS OF CHIEF INSPECTOR

The director is authorized to investigate all elevator and tramway accidents that result in injury to a person or in damage to the installation. [2013, c. 70, Pt. D, §30 (AMD).]

The chief inspector is authorized: [1999, c. 386, Pt. X, §22 (AMD).]

1. **Enforce laws and rules.** To enforce the laws of the State governing the use of elevators and tramways and to enforce adopted rules of the director;

[2013, c. 70, Pt. D, §31 (AMD) .]

2. **Free access to premises or location.** To provide free access for deputy inspectors, including the chief inspector, at all reasonable times to any premises in the State where an elevator or tramway is installed or is under construction for the purpose of ascertaining whether that elevator or tramway is installed, operated, repaired or constructed in accordance with this chapter;

[2001, c. 573, Pt. B, §32 (AMD); 2001, c. 573, Pt. B, §36 (AFF) .]

3. **Supervise inspectors.** To allocate and supervise the work of deputy inspectors;

[2001, c. 573, Pt. B, §33 (AMD); 2001, c. 573, Pt. B, §36 (AFF) .]

4. **Certificates.** To issue and temporarily suspend certificates allowing elevators and tramways to be operated pursuant to Title 5, chapter 375; and

[2013, c. 70, Pt. D, §32 (AMD) .]

5. **Examinations.**

[2013, c. 70, Pt. D, §33 (RP) .]

6. **Take uninspected or unrepaired elevators and tramways out of service.** To take an elevator or tramway out of service in accordance with Title 5, section 10004 if an inspection report has not been submitted to the director within 60 days of the expiration of the most recent certificate or if the owner has failed to make repairs as required by the director. This power is in addition to the chief inspector's powers under section 15221, subsection 3.

[2013, c. 70, Pt. D, §34 (AMD) .]

SECTION HISTORY
1995, c. 560, §H14 (NEW). 1995, c. 560, §H17 (AFF). 1999, c. 386, §X22 (AMD). 2001, c. 573, §§B32-34 (AMD). 2001, c. 573, §B36 (AFF). 2013, c. 70, Pt. D, §§30-34 (AMD).

§15228. ELEVATOR SIZE

1. **Requirements.** Notwithstanding section 15205-A, whenever a passenger elevator is installed in a building being newly constructed or in a new addition that extends beyond the exterior walls of an existing building, the passenger elevator must reach all levels within the building and be of sufficient size to allow the transport of a person on an ambulance stretcher in the fully supine position, without having to raise, lower or bend the stretcher in any way. This requirement applies to all plans approved after January 1, 2002. The director shall adopt rules necessary to carry out the provisions of this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2013, c. 70, Pt. D, §35 (AMD) .]

2. **Applicability.** This section applies only to multi-story buildings that house private entities or nonprofit organizations that serve the public or are places of public accommodation. Notwithstanding Title 5, section 4553, subsection 8, places of public accommodation include restaurants, cafes, hotels, inns, banks, theaters, motion picture houses, bars, taverns, night clubs, country clubs, convention centers, retail stores, shopping centers, hospitals, private schools, day care centers, senior citizen centers, doctor offices, professional offices, manufacturing facilities, apartment buildings, condominiums, state facilities or any private establishment that in fact caters to, or offers its goods, facilities or services to, or solicits or accepts patronage from, the general public. This section does not apply to any building owned by a local unit of government.

[2001, c. 178, §1 (NEW) .]

SECTION HISTORY
2001, c. 178, §1 (NEW). 2013, c. 70, Pt. D, §35 (AMD).

§15229. DUTIES OF OWNERS OF ELEVATORS OR TRAMWAYS

1. **Owner responsibility.** The responsibility for design, construction, maintenance and inspection of an elevator or tramway rests with the person, firm, partnership, association, corporation or company that owns the elevator or tramway.

[2001, c. 573, Pt. B, §35 (NEW); 2001, c. 573, Pt. B, §36 (AFF) .]

2. **Obtain inspection certificate.** The owner of an elevator or tramway shall submit an annual application for an annual inspection certificate together with the inspection report within 30 business days of the inspection and prior to the expiration of the current certificate. The application must be on a form provided by the director and must be accompanied by the required fee set by the director under section 15225-A. A late fee set by the director under section 15225-A may be assessed for failure to submit the application and inspection report in a timely manner.

[2013, c. 70, Pt. D, §36 (AMD) .]

3. **Failure to qualify for inspection certificate.** The owner of an elevator or tramway that does not qualify for an inspection certificate shall take the elevator or tramway out of operation until the required repairs have been made and a new inspection certificate has been issued.

[2001, c. 573, Pt. B, §35 (NEW); 2001, c. 573, Pt. B, §36 (AFF) .]

4. **Notify director when required repairs made.** The owner of an elevator or tramway shall notify the director when required repairs have been made and provide the director with satisfactory evidence of completion.

[2013, c. 70, Pt. D, §36 (AMD) .]

5. **Elevator or tramway declared idle or placed out of service.** The owner of an elevator or tramway that has been declared idle or placed out of service in accordance with rules adopted by the director shall notify the director within 30 days of declaring the elevator or tramway idle.

[2013, c. 70, Pt. D, §36 (AMD) .]

6. **Removal.** The owner of an elevator or tramway shall notify the director within 30 days of the removal of the elevator or tramway.

[2013, c. 70, Pt. D, §36 (AMD) .]

7. **Change of ownership.** The owner of record of an elevator or tramway shall notify the director of a transfer of ownership of an elevator within 30 days of such transfer. The new owner shall apply, on a form provided by the director, for a new inspection certificate that will be issued without the need for an additional inspection for the remainder of the term of the current certificate. A fee for issuance of a new inspection certificate may be set by the director under section 15225-A.

[2013, c. 70, Pt. D, §36 (AMD) .]

8. **Failure to comply.** In addition to the remedies available under this chapter, an owner who fails to comply with the provisions of this chapter or rules adopted by the director is subject to the provisions of Title 10, section 8003, subsection 5 whether or not the elevator or tramway has a current inspection certificate, except that, notwithstanding Title 10, section 8003, subsection 5, paragraph A-1, subparagraph 3, a civil penalty of up to $3,000 may be imposed for each violation.

[2013, c. 70, Pt. D, §36 (AMD) .]

SECTION HISTORY
2001, c. 573, §B35 (NEW). 2001, c. 573, §B36 (AFF). 2013, c. 70, Pt. D, §36 (AMD).

Chapter 135: MAINE UNIFORM SECURITIES ACT

Subchapter 1: GENERAL PROVISIONS
HEADING: PL 2005, C. 65, PT. A, §2 (NEW)

§16101. SHORT TITLE

This chapter may be known and cited as "the Maine Uniform Securities Act." [2005, c. 65, Pt. A, §2 (NEW).]

SECTION HISTORY
2005, c. 65, §A2 (NEW).

§16102. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2005, c. 65, Pt. A, §2 (NEW).]

1. **Administrator.** "Administrator" means the Securities Administrator under section 16601.

[2005, c. 65, Pt. A, §2 (NEW) .]

2. **Agent.** "Agent" means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities. A partner, officer or director of a broker-dealer or issuer or an individual having a similar status or performing similar functions is an agent only if the individual otherwise comes within the meaning of the term "agent." "Agent" does not include an individual excluded by rule adopted or order issued under this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2005, c. 65, Pt. A, §2 (NEW) .]

3. **Bank.** "Bank" means:

A. A banking institution organized under the laws of the United States; [2005, c. 65, Pt. A, §2 (NEW).]

B. A member bank of the Federal Reserve System; [2005, c. 65, Pt. A, §2 (NEW).]

C. A banking institution, whether incorporated or not, doing business under the laws of a state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to be exercised by national banks under the authority of the Comptroller of the Currency pursuant to Section 1 of United States Public Law 87-722, 12 United States Code, Section 92a, and that is supervised and examined by a state or federal agency having supervision over banks and that is not operated for the purpose of evading this chapter; and [2005, c. 65, Pt. A, §2 (NEW).]

D. A receiver, conservator or other liquidating agent of any institution or firm described in paragraph A, B or C. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

4. **Broker-dealer.** "Broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. "Broker-dealer" does not include:

A. An agent; [2005, c. 65, Pt. A, §2 (NEW).]

B. An issuer; [2005, c. 65, Pt. A, §2 (NEW).]

C. A bank, credit union or savings institution if its activities as a broker-dealer are limited to those specified in Section 3(a)(4)(B)(i) to (vi) and (viii) to (x); Section 3(a)(5)(B); and Section 3(a)(5)(C) of the federal Securities Exchange Act of 1934, 15 United States Code, Sections 78c(a)(4) and (5); [2005, c. 65, Pt. A, §2 (NEW).]

D. An international banking institution; or [2005, c. 65, Pt. A, §2 (NEW).]

E. Any other person the administrator excludes, by rule or order, consistent with the public interest and protection of investors. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

5. **Depository institution.** "Depository institution" means:

A. A bank; or [2005, c. 65, Pt. A, §2 (NEW).]

B. A savings institution, trust company, credit union or similar institution that is organized or chartered under the laws of a state or of the United States, authorized to receive deposits and supervised and examined by an official or agency of a state or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or a successor authorized by federal law. [2005, c. 65, Pt. A, §2 (NEW).]

"Depository institution" does not include an insurance company or other organization primarily engaged in the business of insurance; a Morris Plan bank; or an industrial loan company.

[2005, c. 65, Pt. A, §2 (NEW) .]

6. **Federal covered investment adviser.** "Federal covered investment adviser" means a person registered under the federal Investment Advisers Act of 1940.

[2005, c. 65, Pt. A, §2 (NEW) .]

7. **Federal covered security.** "Federal covered security" means a security that is, or upon completion of a transaction will be, a covered security under Section 18(b) of the federal Securities Act of 1933, 15 United States Code, Section 77r(b) or rules or regulations adopted pursuant to that provision.

[2005, c. 65, Pt. A, §2 (NEW) .]

8. **Filing.** "Filing" means the receipt under this chapter of a record by the administrator or a designee of the administrator.

[2005, c. 65, Pt. A, §2 (NEW) .]

9. **Fraud; deceit; defraud.** "Fraud," "deceit" and "defraud" are not limited to common law deceit.

[2005, c. 65, Pt. A, §2 (NEW) .]

10. **Guaranteed.** "Guaranteed" means guaranteed as to payment of all or substantially all of principal and interest or dividends.

[2005, c. 65, Pt. A, §2 (NEW) .]

11. **Institutional investor.** "Institutional investor" means any of the following, whether acting for itself or for others in a fiduciary capacity:

A. A depository institution or international banking institution; [2005, c. 65, Pt. A, §2 (NEW).]

B. An insurance company; [2005, c. 65, Pt. A, §2 (NEW).]

C. A separate account of an insurance company; [2005, c. 65, Pt. A, §2 (NEW).]

D. An investment company as defined in the federal Investment Company Act of 1940; [2005, c. 65, Pt. A, §2 (NEW).]

E. A broker-dealer registered under the federal Securities Exchange Act of 1934; [2005, c. 65, Pt. A, §2 (NEW).]

F. An employee pension, profit-sharing or benefit plan if the plan has total assets in excess of $10,000,000 or its investment decisions are made by a named fiduciary, as defined in the federal Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the federal Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the federal Investment Advisers Act of 1940, an investment adviser registered under this chapter, a depository institution or an insurance company; [2005, c. 65, Pt. A, §2 (NEW).]

G. A plan established and maintained by a state, a political subdivision of a state or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees, if the plan has total assets in excess of $10,000,000 or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in the federal Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the federal Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the federal Investment Advisers Act of 1940, an investment adviser registered under this chapter, a depository institution or an insurance company; [2005, c. 65, Pt. A, §2 (NEW).]

H. A trust, if it has total assets in excess of $10,000,000, its trustee is a depository institution and its participants are exclusively plans of the types identified in paragraph F or G, regardless of the size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans; [2005, c. 65, Pt. A, §2 (NEW).]

I. An organization described in Section 501(c)(3) of the Internal Revenue Code, 26 United States Code, Section 501(c)(3), a corporation, a Massachusetts trust or similar business trust, a limited liability company or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of $10,000,000; [2005, c. 65, Pt. A, §2 (NEW).]

J. A small business investment company licensed by the United States Small Business Administration under Section 301(c) of the federal Small Business Investment Act of 1958, 15 United States Code, Section 681(c) with total assets in excess of $5,000,000; [2005, c. 65, Pt. A, §2 (NEW).]

K. A private business development company as defined in Section 202(a)(22) of the federal Investment Advisers Act of 1940, 15 United States Code, Section 80b-2(a)(22) with total assets in excess of $5,000,000; [2005, c. 65, Pt. A, §2 (NEW).]

L. A federal covered investment adviser acting for its own account; [2005, c. 65, Pt. A, §2 (NEW).]

M. A qualified institutional buyer as defined in 17 Code of Federal Regulations, 230.144A(a)(1), except as defined in 17 Code of Federal Regulations 230.144A(a)(1)(i)(H); [2005, c. 65, Pt. A, §2 (NEW).]

N. A major U.S. institutional investor as defined in 17 Code of Federal Regulations, 240.15a-6(b)(4)(i); [2005, c. 65, Pt. A, §2 (NEW).]

O. Any other person, other than an individual, of institutional character with total assets in excess of $10,000,000 not organized for the specific purpose of evading this chapter; or [2005, c. 65, Pt. A, §2 (NEW).]

P. Any other person specified by rule adopted or order issued under this chapter. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

12. **Insurance company.** "Insurance company" means a company organized as an insurance company whose primary business is writing insurance or reinsuring risks underwritten by insurance companies and that is subject to supervision by the Superintendent of Insurance or a similar official or agency of a state.

[2005, c. 65, Pt. A, §2 (NEW) .]

13. **Insured.** "Insured" means insured as to payment of all or substantially all principal and interest or dividends.

[2005, c. 65, Pt. A, §2 (NEW) .]

14. **International banking institution.** "International banking institution" means an international financial institution of which the United States is a member and whose securities are exempt from registration under the federal Securities Act of 1933.

[2005, c. 65, Pt. A, §2 (NEW) .]

15. **Investment adviser.** "Investment adviser" means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation. "Investment adviser" does not include:

A. An investment adviser representative; [2005, c. 65, Pt. A, §2 (NEW).]

B. A lawyer, accountant, engineer or teacher whose performance of investment advice is solely incidental to the practice of the person's profession; [2005, c. 65, Pt. A, §2 (NEW).]

C. A broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice; [2005, c. 65, Pt. A, §2 (NEW).]

D. A publisher of a bona fide newspaper, news magazine or business or financial publication of general and regular circulation; [2005, c. 65, Pt. A, §2 (NEW).]

E. A federal covered investment adviser; [2005, c. 65, Pt. A, §2 (NEW).]

F. A bank or savings institution; [2005, c. 65, Pt. A, §2 (NEW).]

G. Any other person that is excluded by the federal Investment Advisers Act of 1940 from the definition of investment adviser; or [2005, c. 65, Pt. A, §2 (NEW).]

H. Any other person excluded by rule adopted or order issued under this chapter. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

16. **Investment adviser representatives.** "Investment adviser representatives" means individuals employed by or associated with an investment adviser or federal covered investment adviser and who make any recommendations or otherwise give investment advice regarding securities, manage accounts or

portfolios of clients, determine which recommendation or advice regarding securities should be given, provide investment advice or hold themselves out as providing investment advice, receive compensation to solicit, offer or negotiate for the sale of or for selling investment advice or supervise employees who perform any of the foregoing. "Investment adviser representatives" does not include individuals who:

A. Perform only clerical or ministerial acts; [2005, c. 65, Pt. A, §2 (NEW).]

B. Are agents whose performance of investment advice is solely incidental to the individuals acting as agents and who do not receive special compensation for investment advisory services; [2005, c. 65, Pt. A, §2 (NEW).]

C. Are employed by or associated with a federal covered investment adviser, unless the individuals have a "place of business" in this State as that term is defined by rule adopted under Section 203A of the federal Investment Advisers Act of 1940, 15 United States Code, Section 80b-3a, and are:

(1) "Investment adviser representatives" as that term is defined by rule adopted under Section 203A of the federal Investment Advisers Act of 1940, 15 United States Code, Section 80b-3a; or

(2) Not "supervised persons" as that term is defined in Section 202(a)(25) of the federal Investment Advisers Act of 1940, 15 United States Code, Section 80b-2(a)(25); or [2005, c. 65, Pt. A, §2 (NEW).]

D. Are excluded by rule adopted or order issued under this chapter. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

17. **Issuer.** "Issuer" means a person that issues or proposes to issue a security, subject to the following:

A. The issuer of a voting trust certificate, collateral trust certificate, certificate of deposit for a security or share in an investment company without a board of directors or individuals performing similar functions is the person performing the acts and assuming the duties of depositor or manager pursuant to the trust or other agreement or instrument under which the security is issued; [2005, c. 65, Pt. A, §2 (NEW).]

B. The issuer of an equipment trust certificate or similar security serving the same purpose is the person by which the property is or will be used or to which the property or equipment is or will be leased or conditionally sold or that is otherwise contractually responsible for ensuring payment of the certificate; [2005, c. 65, Pt. A, §2 (NEW).]

C. The issuer of a fractional undivided interest in an oil, gas or other mineral lease or in payments out of production under a lease, right or royalty is the owner of an interest in the lease or in payments out of production under a lease, right or royalty, whether whole or fractional, that creates fractional interests for the purpose of sale; or [2005, c. 65, Pt. A, §2 (NEW).]

D. The issuer of a fractional or pooled interest in a viatical or life settlement contract is the person who creates, for the purpose of sale, the fractional or pooled interest. The issuer of a viatical or life settlement contract that is not fractionalized or pooled is the person effecting the transaction with the investor in such a contract but does not include a broker-dealer or sales representative. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

18. **Nonissuer transaction; nonissuer distribution.** "Nonissuer transaction" or "nonissuer distribution" means a transaction or distribution not directly or indirectly for the benefit of the issuer.

[2005, c. 65, Pt. A, §2 (NEW) .]

19. **Offer to purchase.** "Offer to purchase" includes an attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value. "Offer to purchase" does not include a tender offer that is subject to Section 14(d) of the federal Securities Exchange Act of 1934, 15 United States Code, Section 78n(d).

[2005, c. 65, Pt. A, §2 (NEW) .]

20. **Person.** "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency or instrumentality; public corporation; or any other legal or commercial entity.

[2005, c. 65, Pt. A, §2 (NEW) .]

21. **Place of business.** "Place of business" of a broker-dealer, an investment adviser or a federal covered investment adviser means:

A. An office at which the broker-dealer, investment adviser or federal covered investment adviser regularly provides brokerage or investment advice or solicits, meets with or otherwise communicates with customers or clients; or [2005, c. 65, Pt. A, §2 (NEW).]

B. Any other location that is held out to the general public as a location at which the broker-dealer, investment adviser or federal covered investment adviser provides brokerage or investment advice or solicits, meets with or otherwise communicates with customers or clients. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

22. **Predecessor act.** "Predecessor act" means the former Revised Maine Securities Act.

[2005, c. 65, Pt. A, §2 (NEW) .]

23. **Price amendment.** "Price amendment" means the amendment to a registration statement filed under the federal Securities Act of 1933 or, if an amendment is not filed, the prospectus or prospectus supplement filed under the federal Securities Act of 1933 that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices and other matters dependent upon the offering price.

[2005, c. 65, Pt. A, §2 (NEW) .]

24. **Principal place of business.** "Principal place of business" of a broker-dealer, an investment adviser or an issuer means the executive office of the broker-dealer, investment adviser or issuer from which the officers, partners or managers of the broker-dealer, investment adviser or issuer direct, control and coordinate the activities of the broker-dealer, investment adviser or issuer.

[2005, c. 65, Pt. A, §2 (NEW) .]

25. **Record.** "Record," except in the phrases "of record," "official record" and "public record," means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

[2005, c. 65, Pt. A, §2 (NEW) .]

26. **Sale; offer to sell.** "Sale" includes every contract of sale of, contract to sell or disposition of a security or interest in a security for value. "Offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value. "Sale" and "offer to sell" include:

A. A security given or delivered with, or as a bonus on account of, a purchase of securities or any other thing constituting part of the subject of the purchase and having been offered and sold for value; [2005, c. 65, Pt. A, §2 (NEW).]

B. A gift of assessable stock involving an offer and sale; and [2005, c. 65, Pt. A, §2 (NEW).]

C. A sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer and a sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, including an offer of the other security. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

27. **Securities and Exchange Commission.** "Securities and Exchange Commission" means the United States Securities and Exchange Commission.

[2005, c. 65, Pt. A, §2 (NEW) .]

28. **Security.** "Security" means a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; investment in a viatical or life settlement contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas or other mineral rights; documents of title to or certificates of interest or participation in an oil, gas or other mineral title or lease or in payments out of production under any title, lease, right or royalty; put, call, straddle, option or privilege on a security, certificate of deposit or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option or privilege entered into on a national securities exchange relating to foreign currency; or, in general, an interest or instrument commonly known as a "security"; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of or warrant or right to subscribe to or purchase any of the foregoing. "Security":

A. Includes both a certificated and an uncertificated security; [2005, c. 65, Pt. A, §2 (NEW).]

B. Does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed or variable sum of money either in a lump sum or periodically for life or other specified period; [2005, c. 65, Pt. A, §2 (NEW).]

C. Does not include an interest in a contributory or noncontributory pension or welfare plan subject to the federal Employee Retirement Income Security Act of 1974; [2005, c. 65, Pt. A, §2 (NEW).]

D. Includes as an investment contract an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor. For purposes of this paragraph, "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a 3rd party or other investors; and [2005, c. 65, Pt. A, §2 (NEW).]

E. Includes as an investment contract, among other contracts, an interest in a limited partnership and a limited liability company. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

29. **Self-regulatory organization.** "Self-regulatory organization" means a national securities exchange registered under the federal Securities Exchange Act of 1934, a national securities association of broker-dealers registered under the federal Securities Exchange Act of 1934, a clearing agency registered under the federal Securities Exchange Act of 1934 or the Municipal Securities Rulemaking Board established under the federal Securities Exchange Act of 1934.

[2005, c. 65, Pt. A, §2 (NEW) .]

30. **Sign.** "Sign" means, with present intent to authenticate or adopt a record:

A. To execute or adopt a tangible symbol; or [2005, c. 65, Pt. A, §2 (NEW).]

B. To attach or logically associate with the record an electronic symbol, sound or process. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

31. **State.** "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

[2005, c. 65, Pt. A, §2 (NEW) .]

32. **Viatical or life settlement contract.** "Viatical or life settlement contract" means a written agreement establishing the terms under which compensation or anything of value will be paid, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the assignment, transfer, sale, devise or bequest of the death benefit or ownership of any portion of an insurance policy or certificate of insurance. "Viatical or life settlement contract":

A. Includes a contract for a loan or other financing transaction secured primarily by an individual or group life insurance policy other than a loan by a life insurance company pursuant to the terms of the life insurance contract or a loan secured by the cash value of a policy; [2005, c. 65, Pt. A, §2 (NEW).]

B. Includes an agreement to transfer ownership or change the beneficiary designation of an insurance policy at a later date regardless of the date that compensation for the transfer or change is paid; and [2005, c. 65, Pt. A, §2 (NEW).]

C. Does not include:

(1) The assignment, transfer, sale, devise or bequest of a death benefit, life insurance policy or certificate of insurance by the viator to the viatical settlement provider pursuant to the Viatical and Life Settlements Act;

(2) The assignment, transfer, sale, devise or bequest of a life insurance policy, for any value less than the expected death benefit, by the viator to a friend or family member who enters into no more than one such agreement in a calendar year;

(3) An assignment of a life insurance policy to a supervised lender, as defined in Title 9-A, section 1-301, subsection 39, as collateral for a loan; or

(4) The exercise of accelerated benefits pursuant to the terms of the Maine Insurance Code and of a life insurance policy. [2005, c. 65, Pt. A, §2 (NEW).]

For purposes of this chapter, the individual insured who is the subject of the insurance policy or certificate of insurance does not have to be diagnosed as terminally ill or chronically ill at the time a settlement contract is executed.

[2005, c. 65, Pt. A, §2 (NEW) .]

SECTION HISTORY

2005, c. 65, §A2 (NEW).

§16103. REFERENCES TO FEDERAL STATUTES

Securities Act of 1933, 15 United States Code, Section 77a et seq., Securities Exchange Act of 1934, 15 United States Code, Section 78a et seq., Public Utility Holding Company Act of 1935, 15 United States Code, Section 79 et seq., Investment Company Act of 1940, 15 United States Code, Section 80a-1 et seq., Investment Advisers Act of 1940, 15 United States Code, Section 80b-1 et seq., Employee Retirement Income Security Act of 1974, 29 United States Code, Section 1001 et seq., National Housing Act, 12 United States Code, Section 1701 et seq., Commodity Exchange Act, 7 United States Code, Section 1 et seq., Internal Revenue Code, 26 United States Code, Section 1 et seq., Securities Investor Protection Act of 1970, 15 United States Code, Section 78aaa et seq., Securities Litigation Uniform Standards Act of 1998, 112 Stat. 3227, Small Business Investment Act of 1958, 15 United States Code, Section 661 et seq. and Electronic Signatures in Global and National Commerce Act, 15 United States Code, Section 7001 et seq. mean those federal laws of those names, those statutes and the rules and regulations adopted under those laws and statutes, as amended, as of December 31, 2006. [2007, c. 14, §1 (AMD).]

SECTION HISTORY
2005, c. 65, §A2 (NEW). 2007, c. 14, §1 (AMD).

§16104. REFERENCES TO FEDERAL AGENCIES

A reference in this chapter to an agency or department of the United States is also a reference to a successor agency or department. [2005, c. 65, Pt. A, §2 (NEW).]

SECTION HISTORY
2005, c. 65, §A2 (NEW).

§16105. ELECTRONIC RECORDS AND SIGNATURES

This chapter modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, but does not modify, limit or supersede Section 101(c) of that Act, 15 United States Code, Section 7001(c) or authorize electronic delivery of any of the notices described in Section 103(b) of that Act, 15 United States Code, Section 7003(b). This chapter authorizes the filing of records and signatures, when specified by provisions of this chapter or by a rule adopted or order issued under this chapter, in a manner consistent with Section 104(a) of that Act, 15 United States Code, Section 7004(a). Rules adopted under this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2005, c. 65, Pt. A, §2 (NEW).]

SECTION HISTORY
2005, c. 65, §A2 (NEW).

Subchapter 2: EXEMPTIONS FROM REGISTRATION OF SECURITIES HEADING: PL 2005, C. 65, PT. A, §2 (NEW)

§16201. EXEMPT SECURITIES

The following securities are exempt from the requirements of sections 16301 to 16306 and section 16504: [2005, c. 65, Pt. A, §2 (NEW).]

1. **United States Government, state and municipal securities.** A security, including a revenue obligation or a separate security as defined in 17 Code of Federal Regulations, 230.131 adopted under the federal Securities Act of 1933, issued, insured or guaranteed by the United States; by a state; by a political subdivision of a state; by a public authority, agency or instrumentality of one or more states; by a political

subdivision of one or more states; or by a person controlled or supervised by and acting as an instrumentality of the United States under authority granted by the Congress; or a certificate of deposit for any of the foregoing;

[2005, c. 65, Pt. A, §2 (NEW) .]

2. **Foreign government securities.** A security issued, insured or guaranteed by a foreign government with which the United States maintains diplomatic relations, or any of its political subdivisions, if the security is recognized as a valid obligation by the issuer, insurer or guarantor;

[2005, c. 65, Pt. A, §2 (NEW) .]

3. **Depository institution and international banking institution securities.** A security issued by and representing or that will represent an interest in or a direct obligation of or be guaranteed by:

A. An international banking institution; [2005, c. 65, Pt. A, §2 (NEW).]

B. A banking institution organized under the laws of the United States; a member bank of the Federal Reserve System; or a depository institution, a substantial portion of the business of which consists or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or a successor authorized by federal law or exercising fiduciary powers that are similar to those permitted for national banks under the authority of the Comptroller of Currency pursuant to Section 1 of United States Public Law 87-722, 12 United States Code, Section 92a or a holding company of such a depository institution; or [2005, c. 65, Pt. A, §2 (NEW).]

C. Any other depository institution, unless by rule or order the administrator proceeds under section 16204; [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

4. **Insurance company securities.** A security issued by and representing an interest in, or a debt of, or insured or guaranteed by an insurance company authorized to do business in this State;

[2005, c. 65, Pt. A, §2 (NEW) .]

5. **Common carriers and public utility securities.** A security issued or guaranteed by a railroad, other common carrier, public utility or public utility holding company that is:

A. Regulated in respect to its rates and charges by the United States or a state; [2005, c. 65, Pt. A, §2 (NEW).]

B. Regulated in respect to the issuance or guarantee of the security by the United States, a state, Canada or a Canadian province or territory; or [2005, c. 65, Pt. A, §2 (NEW).]

C. A public utility holding company registered under the federal Public Utility Holding Company Act of 1935 or a subsidiary of such a registered holding company within the meaning of that Act; [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

6. **Federal covered securities.** A federal covered security specified in Section 18(b)(1) of the federal Securities Act of 1933, 15 United States Code, Section 77r(b)(1) or by rule adopted under that provision or a security listed or approved for listing on another securities market specified by rule under this chapter; a put or a call option contract, a warrant or a subscription right on or with respect to such a federal covered security; or an option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency registered under the federal Securities Exchange Act of 1934 and listed or designated for trading on a national securities exchange, a facility of a national securities exchange or a facility of a

national securities association registered under the federal Securities Exchange Act of 1934 or an offer or sale of the underlying security in connection with the offer, sale or exercise of an option or other security that was exempt when the option or other security was written or issued; or an option or a derivative security designated by the Securities and Exchange Commission under Section 9(b) of the federal Securities Exchange Act of 1934, 15 United States Code, Section 78i(b);

[2005, c. 65, Pt. A, §2 (NEW) .]

7. **Nonprofit organization securities.** A security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, social, athletic or reformatory purposes, or as a chamber of commerce, and not for pecuniary profit, no part of the net earnings of which inures to the benefit of a private stockholder or other person, or a security of a company that is excluded from the definition of an investment company under Section 3(c)(10)(B) of the federal Investment Company Act of 1940, 15 United States Code, Section 80a-3(c)(10)(B); except that with respect to the offer or sale of a note, bond, debenture or other evidence of indebtedness issued by such a person a rule may be adopted under this chapter limiting the availability of this exemption by classifying securities, persons and transactions and imposing different requirements for different classes;

[2005, c. 65, Pt. A, §2 (NEW) .]

8. **Cooperatives.** A member's or owner's interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a cooperative organized and operated as a nonprofit membership cooperative under the cooperative laws of a state, but not a member's or owner's interest, retention certificate or like security sold to persons other than bona fide members of the cooperative; and

[2005, c. 65, Pt. A, §2 (NEW) .]

9. **Equipment trust certificates.** An equipment trust certificate with respect to equipment leased or conditionally sold to a person, if any security issued by the person would be exempt under this section or would be a federal covered security under Section 18(b)(1) of the federal Securities Act of 1933, 15 United States Code, Section 77r(b)(1).

[2005, c. 65, Pt. A, §2 (NEW) .]

Rules adopted under this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2005, c. 65, Pt. A, §2 (NEW).]

SECTION HISTORY
2005, c. 65, §A2 (NEW).

§16202. EXEMPT TRANSACTIONS

The following transactions are exempt from the requirements of sections 16301 to 16306 and 16504: [2005, c. 65, Pt. A, §2 (NEW).]

1. **Isolated nonissuer transaction.** An isolated nonissuer transaction, whether effected by or through a broker-dealer or not;

[2005, c. 65, Pt. A, §2 (NEW) .]

2. **Manual exemption.** A nonissuer transaction by or through a broker-dealer licensed under or exempt from licensing under this chapter and a resale transaction by a sponsor of a unit investment trust registered under the federal Investment Company Act of 1940 in a security of a class that has been outstanding in the hands of the public for at least 90 days, if, on the date of the transaction:

A. The issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership and the issuer is not a blank check, blind pool or shell company that has no specific business plan or purpose or that has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person; [2005, c. 65, Pt. A, §2 (NEW).]

B. The security is sold at a price reasonably related to its current market price; [2005, c. 65, Pt. A, §2 (NEW).]

C. The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution; [2005, c. 65, Pt. A, §2 (NEW).]

D. A nationally recognized securities manual or its electronic equivalent designated by routine technical rule as defined in Title 5, chapter 375, subchapter 2-A adopted under this chapter or order issued under this chapter or a publicly available record filed with the Securities and Exchange Commission contains:

(1) A description of the business and operations of the issuer;

(2) The names of the issuer's executive officers and the names of the issuer's directors, if any;

(3) An audited balance sheet of the issuer as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization; and

(4) An audited income statement for each of the issuer's 2 immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a pro forma income statement; and [2005, c. 65, Pt. A, §2 (NEW).]

E. Any one of the following requirements is met:

(1) The issuer of the security has a class of equity securities listed on a national securities exchange registered under Section 6 of the federal Securities Exchange Act of 1934 or designated for trading on the National Association of Securities Dealers Automated Quotation System;

(2) The issuer of the security is a unit investment trust registered under the federal Investment Company Act of 1940;

(3) The issuer of the security, including its predecessors, has been engaged in continuous business for at least 3 years; or

(4) The issuer of the security has total assets of at least $2,000,000 based on an audited balance sheet as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had such an audited balance sheet, a pro forma balance sheet for the combined organization; [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

3. **Nonissuer transactions in specified foreign transactions.** A nonissuer transaction by or through a broker-dealer licensed under or exempt from licensing under this chapter in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the Board of Governors of the Federal Reserve System;

[2005, c. 65, Pt. A, §2 (NEW) .]

4. **Nonissuer transactions in securities where guarantor is subject to Securities Exchange Act reporting.** A nonissuer transaction by or through a broker-dealer licensed under or exempt from licensing under this chapter in an outstanding security if the guarantor of the security files reports with the Securities and Exchange Commission under the reporting requirements of Section 13 or 15(d) of the federal Securities Exchange Act of 1934, 15 United States Code, Section 78m or 78o(d);

[2005, c. 65, Pt. A, §2 (NEW) .]

5. **Nonissuer transactions in specified fixed income securities.** A nonissuer transaction by or through a broker-dealer licensed under or exempt from licensing under this chapter in a security that:

A. Is rated at the time of the transaction by a nationally recognized statistical rating organization in one of its 4 highest rating categories; or [2005, c. 65, Pt. A, §2 (NEW).]

B. Has a fixed maturity or a fixed interest or dividend if:

(1) A default has not occurred during the current fiscal year or within the 3 previous fiscal years or during the existence of the issuer and any predecessor if less than 3 fiscal years in the payment of principal, interest or dividends on the security; and

(2) The issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership and is not and has not been within the previous 12 months a blank check, blind pool or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person; [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

6. **Unsolicited brokerage transactions.** A nonissuer transaction by or through a broker-dealer licensed under or exempt from licensing under this chapter effecting an unsolicited order or offer to purchase;

[2005, c. 65, Pt. A, §2 (NEW) .]

7. **Nonissuer transactions by pledgees.** A nonissuer transaction executed by a bona fide pledgee without the purpose of evading this chapter;

[2005, c. 65, Pt. A, §2 (NEW) .]

8. **Nonissuer transactions with federal covered investment advisers.** A nonissuer transaction by a federal covered investment adviser with investments under management in excess of $100,000,000 acting in the exercise of discretionary authority in a signed record for the account of others;

[2005, c. 65, Pt. A, §2 (NEW) .]

9. **Specified exchange transactions.** A transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for one or more bona fide outstanding securities, claims or property interests or partly in such exchange and partly for cash, if the terms and conditions of the issuance and exchange or the delivery and exchange and the fairness of the terms and conditions have been approved by the administrator after a hearing. The administrator may impose actual costs and a reasonable fee for conducting a hearing under this subsection;

[2005, c. 65, Pt. A, §2 (NEW) .]

10. **Underwriter transactions.** A transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

[2005, c. 65, Pt. A, §2 (NEW) .]

11. **Mortgage secured unit transactions.** A transaction in a note, bond, debenture or other evidence of indebtedness secured by a mortgage or other security agreement if:

A. The note, bond, debenture or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit; [2005, c. 65, Pt. A, §2 (NEW).]

B. A general solicitation or general advertisement of the transaction is not made; [2005, c. 65, Pt. A, §2 (NEW).]

C. A commission or other remuneration is not paid or given, directly or indirectly, to a person not licensed under this chapter as a broker-dealer or as an agent; and [2005, c. 65, Pt. A, §2 (NEW).]

D. The outstanding principal amount of all notes or other evidence of indebtedness that is secured by the mortgage or other security agreement does not exceed the fair market value of the property at the time of the transaction, or the issuer otherwise proves that it relied on reasonable evidence that the fair market value was not so exceeded at the time of the transaction; [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

12. **Personal representative, guardian transactions.** A transaction by a personal representative, as defined in Title 18-A, section 1-201, subsection 30, executor, administrator of an estate, sheriff, marshal, receiver, trustee in bankruptcy, guardian or conservator acting in their official capacities;

[2005, c. 65, Pt. A, §2 (NEW) .]

13. **Transactions with specified investors.** A sale or offer to sell to:

A. An institutional investor; [2005, c. 65, Pt. A, §2 (NEW).]

B. A federal covered investment adviser; or [2005, c. 65, Pt. A, §2 (NEW).]

C. Any other person exempted by routine technical rule, as defined in Title 5, chapter 375, subchapter 2-A, adopted or order issued under this chapter; [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

14. **Limited private offering transactions, any issuer.** A sale or an offer to sell securities by or on behalf of an issuer, if the transaction is part of a single issue in which:

A. Not more than 10 purchasers are present in this State during any 12 consecutive months, other than those designated in subsection 13; [2005, c. 65, Pt. A, §2 (NEW).]

B. A general solicitation or general advertising is not made in connection with the offer to sell or sale of the securities; [2005, c. 65, Pt. A, §2 (NEW).]

C. A commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer licensed under this chapter or an agent licensed under this chapter for soliciting a prospective purchaser in this State; and [2005, c. 65, Pt. A, §2 (NEW).]

D. The issuer reasonably believes that all the purchasers in this State, other than those designated in subsection 13, are purchasing for investment; [2005, c. 65, Pt. A, §2 (NEW).]

[2007, c. 14, §2 (AMD) .]

15. **Limited private offering transactions, Maine issuer.** A sale or an offer to sell securities of a corporation, limited partnership or limited liability company organized under the laws of this State or any issuer determined by the administrator by order to have its principal place of business in this State, if the sale or offer is by or on behalf of the issuer and if the transaction is part of a single issue in which:

A. Not more than 25 purchasers are present in this State during any 12 consecutive months, other than those designated in subsection 13; [2005, c. 65, Pt. A, §2 (NEW).]

B. A general solicitation or general advertising is not made in connection with the offer to sell or sale of the securities; [2005, c. 65, Pt. A, §2 (NEW).]

C. A commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer licensed under this chapter or an agent licensed under this chapter for soliciting a prospective purchaser in this State; [2005, c. 65, Pt. A, §2 (NEW).]

D. The issuer reasonably believes that all the purchasers in this State, other than those designated in subsection 13, are purchasing for investment; [2005, c. 65, Pt. A, §2 (NEW).]

E. The issuer files with the administrator a notification for exemption that must be in such form as may be prescribed by the administrator by order or by routine technical rule, as defined in Title 5, chapter 375, subchapter 2-A; and [2005, c. 65, Pt. A, §2 (NEW).]

F. The issuer provides a copy of the notification of exemption to each offeree of securities sold in reliance on this exemption, which must contain such legends as the administrator prescribes, notifying the offeree that the securities have not been registered with the administrator, that they may be considered restricted securities and that the issuer is under an obligation to make a reasonable finding that the securities are a suitable investment for the offeree; [2005, c. 65, Pt. A, §2 (NEW).]

[2007, c. 14, §3 (AMD) .]

16. **Transactions with existing securities holders.** A transaction under an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options or warrants, if a commission or other remuneration, other than a standby commission, is not paid or given, directly or indirectly, for soliciting a security holder in this State;

[2005, c. 65, Pt. A, §2 (NEW) .]

17. **Offerings filed but not effective, nonexempt securities.** An offer to sell, but not a sale, of a security not exempt from registration under the federal Securities Act of 1933 if:

A. A registration or offering statement or similar record as required under the federal Securities Act of 1933 has been filed, but is not effective, or the offer is made in compliance with 17 Code of Federal Regulations, 230.165; and [2005, c. 65, Pt. A, §2 (NEW).]

B. A stop order of which the offeror is aware has not been issued against the offeror by the administrator or the Securities and Exchange Commission and an audit, inspection or proceeding that is public and that may culminate in a stop order is not known by the offeror to be pending; [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

18. **Offerings filed but not effective, exempt securities.** An offer to sell, but not a sale, of a security exempt from registration under the federal Securities Act of 1933 if:

A. A registration statement has been filed under this chapter, but is not effective; [2005, c. 65, Pt. A, §2 (NEW).]

B. A solicitation of interest is provided in a record to offerees in compliance with a routine technical rule, as defined in Title 5, chapter 375, subchapter 2-A, adopted by the administrator under this chapter; and [2005, c. 65, Pt. A, §2 (NEW).]

C. A stop order of which the offeror is aware has not been issued against the offeror by the administrator or the Securities and Exchange Commission and an audit, inspection or proceeding that may culminate in a stop order is not known by the offeror to be pending; [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

19. **Control transactions.** A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets or other reorganization to which the issuer, or its parent or subsidiary, and the other person, or its parent or subsidiary, are parties;

[2005, c. 65, Pt. A, §2 (NEW) .]

20. **Rescission offers.** A rescission offer, sale or purchase under section 16510;

[2005, c. 65, Pt. A, §2 (NEW) .]

21. **Not violative of laws of foreign state or jurisdiction.** An offer or sale of a security to a person not a resident of this State and not present in this State if the offer or sale does not constitute a violation of the laws of the state or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade this chapter.

[2005, c. 65, Pt. A, §2 (NEW) .]

22. **Employee benefit plans.** An employees' stock purchase, savings, option, profit-sharing, pension or similar employees' benefit plan, including any securities, plan interests and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries or the majority-owned subsidiaries of the issuer's parent for the participation of their employees including offers or sales of such securities to:

A. Directors; general partners; trustees, if the issuer is a business trust; officers; and consultants and advisors, as permitted by 17 Code of Federal Regulations, 230.701(c)(1) (2003); [2005, c. 65, Pt. A, §2 (NEW).]

B. Family members who acquire such securities from those persons through gifts or domestic relations orders; [2005, c. 65, Pt. A, §2 (NEW).]

C. Former employees, directors, general partners, trustees, officers and consultants and advisors, as permitted by 17 Code of Federal Regulations, 230.701(c)(1) (2003), if those individuals were employed by or providing services to the issuer when the securities were offered; and [2005, c. 65, Pt. A, §2 (NEW).]

D. Insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than 50% of their annual income from those organizations; [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

23. **Specified dividends, tender offers, judicially recognized reorganizations.** A transaction involving:

A. A stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property or stock; [2005, c. 65, Pt. A, §2 (NEW).]

B. An act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims or property interests, or partly in such exchange and partly for cash; or [2005, c. 65, Pt. A, §2 (NEW).]

C. The solicitation of tenders of securities by an offeror in a tender offer in compliance with 17 Code of Federal Regulations, 230.162; [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

24. **Nonissuer transactions in specified foreign issuers securities.** A nonissuer transaction in an outstanding security by or through a broker-dealer licensed under or exempt from licensing under this chapter, if the issuer is a reporting issuer in a foreign jurisdiction designated by this paragraph or by rule adopted or order issued under this chapter; the issuer has been subject to continuous reporting requirements in the foreign jurisdiction for not less than 180 days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this paragraph or by routine technical rule, as defined in Title 5, chapter 375, subchapter 2-A, adopted or order issued under this chapter, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this paragraph, Canada, together with its provinces and territories, is a designated foreign jurisdiction and the Toronto Stock Exchange, Inc. is a designated securities exchange. After an administrative hearing in compliance with the Maine Administrative Procedure Act, the administrator, by order issued under this chapter, may revoke the designation of a securities exchange under this paragraph if the administrator finds that revocation is necessary or appropriate in the public interest and for the protection of investors;

[2005, c. 65, Pt. A, §2 (NEW) .]

25. **Investments in viatical or life settlement contracts.** Any offer or sale of an investment in a viatical or life settlement contract, if:

A. The underlying viatical or life settlement transaction with the viator was not in violation of the Viatical and Life Settlements Act; [2005, c. 65, Pt. A, §2 (NEW).]

B. Such disclosure documents as the administrator, by rule or order, requires are delivered to each offeree or purchaser; and [2005, c. 65, Pt. A, §2 (NEW).]

C. Prior to any offer in this State, a notice specifying the terms of the offer is filed with the administrator together with a consent to service of process complying with section 16611, signed by the issuer, and a nonrefundable filing fee of $300 for each type or class of security being offered in this State and the administrator does not by order disallow the exemption within the next 5 full business days; or [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

26. **Nonpublic offerings under 4(2).** A security offered in a nonpublic offering under Section 4(2) of the federal Securities Act of 1933, 15 United States Code, Section 77d(2) if, no later than 15 days after the first sale in this State, a notice on "Form D," as promulgated by the Securities and Exchange Commission, is filed with the administrator together with a consent to service of process complying with section 16611, signed by the issuer, and the payment of a nonrefundable filing fee of $300 for each type or class of security sold. If the Form D includes a consent to service of process, a separate document need not be filed for this purpose, and if the consent to service of process on the Form D is executed in a manner accepted by the Securities and Exchange Commission, it is deemed to comply with the requirement in this section and section 16611, subsection 1 that the consent be signed. An additional nonrefundable late filing fee of $500 must be paid for a filing made between 16 and 30 days after the first sale in this State.

[2009, c. 500, §1 (AMD) .]

SECTION HISTORY

2005, c. 65, §A2 (NEW). 2007, c. 14, §§2, 3 (AMD). 2009, c. 500, §1 (AMD).

§16203. ADDITIONAL EXEMPTIONS AND WAIVERS

If the administrator finds that it is consistent with the public interest and the protection of investors, a rule adopted or order issued under this chapter may: exempt a security, transaction or offer; exempt a class of securities, transactions or offers from any or all of the requirements of sections 16301 to 16306 and 16504; and waive, in whole or in part, any or all of the conditions for an exemption or offer under sections 16201 and 16202. In any rule or order establishing an exemption for which a filing is required, the administrator may provide for a nonrefundable filing fee not to exceed $500. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2005, c. 65, Pt. A, §2 (NEW).]

SECTION HISTORY
2005, c. 65, §A2 (NEW).

§16204. DENIAL, SUSPENSION, REVOCATION, CONDITION OR LIMITATION OF EXEMPTIONS

1. **Enforcement related powers.** Notwithstanding the Maine Administrative Procedure Act, an order under this chapter may deny, suspend application of, condition, limit or revoke an exemption created under section 16201, subsection 3, paragraph C, section 16201, subsection 7 or 8 or section 16202 or an exemption or waiver created under section 16203 with respect to a specific security, transaction or offer if the administrator finds that the order is consistent with the public interest and the protection of the public. An order under this section may be issued only pursuant to the procedures in section 16306, subsection 4 or section 16604 and only prospectively.

[2005, c. 65, Pt. A, §2 (NEW) .]

2. **Knowledge of order required.** A person does not violate section 16301, sections 16303 to 16306, section 16504 or section 16510 by an offer to sell, offer to purchase, sale or purchase effected after the entry of an order issued under this section if the person did not know, and in the exercise of reasonable care could not have known, of the order.

[2005, c. 65, Pt. A, §2 (NEW) .]

SECTION HISTORY
2005, c. 65, §A2 (NEW).

Subchapter 3: REGISTRATION OF SECURITIES AND NOTICE FILING OF FEDERAL COVERED SECURITIES HEADING: PL 2005, C. 65, PT. A, §2 (NEW)

§16301. SECURITIES REGISTRATION REQUIREMENT

It is unlawful for a person to offer or sell a security in this State unless: [2005, c. 65, Pt. A, §2 (NEW).]

1. **Federal covered security.** The security is a federal covered security;

[2005, c. 65, Pt. A, §2 (NEW) .]

2. **Exempt from registration.** The security, transaction or offer is exempted from registration under sections 16201 to 16203; or

[2005, c. 65, Pt. A, §2 (NEW) .]

3. **Registered.** The security is registered under this chapter.

[2005, c. 65, Pt. A, §2 (NEW) .]

SECTION HISTORY
2005, c. 65, §A2 (NEW).

§16302. NOTICE FILING

1. **Notice filings for federal covered securities under Section 18(b)(2) of the federal Securities Act of 1933.** A federal covered security, as defined in Section 18(b)(2) of the federal Securities Act of 1933, 15 United States Code, Section 77r(b)(2), that is not otherwise exempt under sections 16201 to 16203 may not be offered or sold in this State unless before the initial offer in this State the following are filed with the administrator:

A. The uniform investment company notice filing form; [2005, c. 65, Pt. A, §2 (NEW).]

B. A consent to service of process complying with section 16611 signed by the issuer; and [2005, c. 65, Pt. A, §2 (NEW).]

C. The payment of a nonrefundable fee of $1,000 for each type or class of security offered. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

2. **Notice filing effectiveness and renewal.** A notice filing under subsection 1 is effective for one year commencing on the date of the notice filing, the date of effectiveness of the offering filed with the Securities and Exchange Commission or a date selected by the filer, whichever date is latest. On or before expiration, a notice filing may be renewed by filing the uniform investment company notice filing form and by paying a nonrefundable renewal fee of $1,000 for each type or class of security offered. A previously filed consent to service of process complying with section 16611 may be incorporated by reference in a renewal. A renewed notice filing becomes effective upon the expiration of the filing being renewed.

[2005, c. 65, Pt. A, §2 (NEW) .]

3. **Notice filings for federal covered securities under Section 18(b)(4)(D).** A security that is a federal covered security under Section 18(b)(4)(D) of the federal Securities Act of 1933, 15 United States Code, Section 77r(b)(4)(D) that is not otherwise exempt under sections 16201 to 16203 may not be sold in this State unless the following records are filed with the administrator no later than 15 days after the first sale in this State:

A. A notice on "Form D," as promulgated by the Securities and Exchange Commission; [2009, c. 500, §2 (AMD).]

B. A consent to service of process complying with section 16611, signed by the issuer, except that if the Form D includes a consent to service of process, a separate document need not be filed for this purpose, and if the consent to service of process on the Form D is executed in a manner accepted by the Securities and Exchange Commission, it is deemed to comply with the requirement in this section and in section 16611, subsection 1 that the consent be signed; and [2009, c. 500, §3 (AMD).]

C. The payment of a nonrefundable fee of $300 per type or class of security sold.

A notice filer making a filing between 16 and 30 days after the first sale in this State shall pay an additional nonrefundable late filing fee of $500. [2005, c. 65, Pt. A, §2 (NEW).]

[2009, c. 500, §§2, 3 (AMD) .]

4. **Stop orders.** Except with respect to a federal covered security under Section 18(b)(1) of the federal Securities Act of 1933, 15 United States Code, Section 77r(b)(1), if the administrator finds that there is a failure to comply with a notice or fee requirement of this section or any rule adopted under this section, the administrator may issue a stop order suspending the offer and sale of a federal covered security in this State. If the deficiency is corrected, the stop order is void as of the time of its issuance and no penalty may be imposed by the administrator.

[2005, c. 65, Pt. A, §2 (NEW) .]

5. **Other federal covered securities.** Unless the administrator provides otherwise by rule, any other federal covered security may be offered and sold in this State in reliance on its being a federal covered security without the filing of a notice or the payment of a fee.

[2005, c. 65, Pt. A, §2 (NEW) .]

6. **Rulemaking.** Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2005, c. 65, Pt. A, §2 (NEW) .]

SECTION HISTORY
2005, c. 65, §A2 (NEW). 2009, c. 500, §§2, 3 (AMD).

§16303. SECURITIES REGISTRATION BY COORDINATION

1. **Registration permitted.** A security for which a registration statement has been filed under the federal Securities Act of 1933 in connection with the same offering may be registered by coordination under this section.

[2005, c. 65, Pt. A, §2 (NEW) .]

2. **Required records.** A registration statement and accompanying records under this section must contain or be accompanied by the following records in addition to the information specified in section 16305 and a consent to service of process complying with section 16611:

A. A copy of the latest form of prospectus filed under the federal Securities Act of 1933; [2005, c. 65, Pt. A, §2 (NEW).]

B. If requested by the administrator, a copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect; a copy of any agreement with or among underwriters; a copy of any indenture or other instrument governing the issuance of the security to be registered; and a specimen, copy or description of the security; [2005, c. 65, Pt. A, §2 (NEW).]

C. Copies of any other information or any other records filed by the issuer under the federal Securities Act of 1933 requested by the administrator; and [2005, c. 65, Pt. A, §2 (NEW).]

D. An undertaking to forward each amendment to the federal prospectus, other than an amendment that delays the effective date of the registration statement, promptly after it is filed with the Securities and Exchange Commission. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

3. **Conditions for effectiveness of registration statement.** A registration statement under this section becomes effective simultaneously with or subsequent to the federal registration statement when all the following conditions are satisfied:

A. A stop order under subsection 4 or section 16306 or issued by the Securities and Exchange Commission is not in effect and a proceeding is not pending against the issuer under section 16306; and [2005, c. 65, Pt. A, §2 (NEW).]

B. The registration statement has been on file for at least 20 days or a shorter period provided by order issued under this chapter. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

4. **Notice of federal registration statement effectiveness.** The registrant shall promptly notify the administrator in a record of the date when the federal registration statement becomes effective and the content of any price amendment and shall promptly file a record containing the price amendment. If the notice is not timely received, the administrator may issue a stop order, without prior notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this section. The administrator shall promptly notify the registrant of an order by telegram, telephone or electronic means and promptly confirm this notice by a record. If the registrant subsequently complies with the notice requirements of this section within 15 days of the issuance of the stop order, the stop order is void as of the date of its issuance.

[2005, c. 65, Pt. A, §2 (NEW) .]

5. **Effectiveness of registration statement.** If the federal registration statement becomes effective before each of the conditions in this section is satisfied or is waived by the administrator, the registration statement is automatically effective under this chapter when all the conditions are satisfied or waived. If the registrant notifies the administrator of the date when the federal registration statement is expected to become effective, the administrator shall promptly notify the registrant by telegram, telephone or electronic means and promptly confirm this notice by a record, indicating whether all the conditions are satisfied or waived and whether the administrator intends the institution of a proceeding under section 16306. The notice by the administrator does not preclude the institution of such a proceeding.

[2005, c. 65, Pt. A, §2 (NEW) .]

6. **Prospectus delivery.** When a security is registered under this section, the prospectus filed under the federal Securities Act of 1933 must be delivered at the time mandated by the prospectus delivery requirements of that Act to each purchaser in this State.

[2005, c. 65, Pt. A, §2 (NEW) .]

SECTION HISTORY
2005, c. 65, §A2 (NEW).

§16304. SECURITIES REGISTRATION BY QUALIFICATION

1. **Registration permitted.** A security may be registered by qualification under this section.

[2005, c. 65, Pt. A, §2 (NEW) .]

2. **Required records.** A registration statement under this section must contain the information or records specified in section 16305, a consent to service of process complying with section 16611 and the following information or records:

A. With respect to the issuer and any significant subsidiary, its name, address and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged; [2005, c. 65, Pt. A, §2 (NEW).]

B. With respect to each director and officer of the issuer, and other person having a similar status or performing similar functions, the person's name, address and principal occupation for the previous 5 years; the amount of securities of the issuer held by the person as of the 30th day before the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest of the person in any material transaction with the issuer or a significant subsidiary effected within the previous 3 years or proposed to be effected; [2005, c. 65, Pt. A, §2 (NEW).]

C. With respect to persons covered by paragraph B, the aggregate sum of the remuneration paid to those persons during the previous 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer and all predecessors, parents, subsidiaries and affiliates of the issuer; [2005, c. 65, Pt. A, §2 (NEW).]

D. With respect to a person owning of record or owning beneficially, if known, 10% or more of the outstanding shares of any class of equity security of the issuer, the information specified in paragraph B other than the person's occupation; [2005, c. 65, Pt. A, §2 (NEW).]

E. With respect to a promoter, if the issuer was organized within the previous 3 years, the information or records specified in paragraph B, any amount paid to the promoter within that period or intended to be paid to the promoter and the consideration for the payment; [2005, c. 65, Pt. A, §2 (NEW).]

F. With respect to a person on whose behalf any part of the offering is to be made in a nonissuer distribution, the person's name and address; the amount of securities of the issuer held by the person as of the date of the filing of the registration statement; a description of any material interest of the person in any material transaction with the issuer or any significant subsidiary effected within the previous 3 years or proposed to be effected; and a statement of the reasons for making the offering; [2005, c. 65, Pt. A, §2 (NEW).]

G. The capitalization and long-term debt, on both a current and pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill or anything else of value, for which the issuer or any subsidiary has issued its securities within the previous 2 years or is obligated to issue its securities; [2005, c. 65, Pt. A, §2 (NEW).]

H. The kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation at which a proportion of the offering is to be made to a person or class of persons other than the underwriters, with a specification of the person or class; the basis on which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finder's fees, including separately cash, securities, contracts or anything else of value to accrue to the underwriters or finders in connection with the offering or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering and accounting charges; the name and address of each underwriter and each recipient of a finder's fee; a copy of any underwriting or selling group agreement under which the distribution is to be made or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities that are to be offered otherwise than through an underwriter; [2005, c. 65, Pt. A, §2 (NEW).]

I. The estimated monetary proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the estimated amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of the funds; and, if a part of the proceeds is to be used to acquire property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons that have received commissions in connection with the acquisition and the amounts of the commissions and other expenses in connection with the acquisition, including the cost of borrowing money to finance the acquisition; [2005, c. 65, Pt. A, §2 (NEW).]

J. A description of any stock options or other security options outstanding, or to be created in connection with the offering, and the amount of those options held or to be held by each person required to be named in paragraph B, D, E, F or H and by any person that holds or will hold 10% or more in the aggregate of those options; [2005, c. 65, Pt. A, §2 (NEW).]

K. The dates of, parties to and general effect concisely stated of each managerial or other material contract made or to be made otherwise than in the ordinary course of business to be performed in whole or in part at or after the filing of the registration statement or that was made within the previous 2 years and a copy of the contract; [2005, c. 65, Pt. A, §2 (NEW).]

L. A description of any pending litigation, action or proceeding to which the issuer is a party and that materially affects its business or assets and any litigation, action or proceeding known to be contemplated by governmental authorities; [2005, c. 65, Pt. A, §2 (NEW).]

M. A copy of any prospectus, pamphlet, circular, form letter, advertisement or other sales literature intended as of the effective date to be used in connection with the offering and any solicitation of interest used in compliance with section 16202, subsection 18, paragraph B; [2005, c. 65, Pt. A, §2 (NEW).]

N. A specimen or copy of the security being registered, unless the security is uncertificated; a copy of the issuer's articles of incorporation and bylaws or their substantial equivalents, in effect; and a copy of any indenture or other instrument covering the security to be registered; [2005, c. 65, Pt. A, §2 (NEW).]

O. A signed or conformed copy of an opinion of counsel concerning the legality of the security being registered, with an English translation if it is in a language other than English, that states whether the security when sold will be validly issued, fully paid and nonassessable and, if a debt security, a binding obligation of the issuer; [2005, c. 65, Pt. A, §2 (NEW).]

P. A signed or conformed copy of a consent of any accountant, engineer, appraiser or other person whose profession gives authority for a statement made by the person, if the person is named as having prepared or certified a report or valuation, other than an official record, that is public and that is used in connection with the registration statement; [2005, c. 65, Pt. A, §2 (NEW).]

Q. A balance sheet of the issuer as of a date within 4 months before the filing of the registration statement; a statement of income and a statement of cash flows for each of the 3 fiscal years preceding the date of the balance sheet and for any period between the close of the immediately previous fiscal year and the date of the balance sheet or for the period of the issuer's and any predecessor's existence if less than 3 years; and, if any part of the proceeds of the offering is to be applied to the purchase of a business, the financial statements that would be required if that business were the registrant; and [2005, c. 65, Pt. A, §2 (NEW).]

R. Any additional information or records required by rule adopted or order issued under this chapter. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

3. **Conditions for effectiveness of registration statement.** A registration statement under this section becomes effective 30 days, or any shorter period provided by rule adopted or order issued under this chapter, after the date the registration statement or the last amendment other than a price amendment is filed if:

A. A stop order is not in effect and a proceeding is not pending under section 16306; [2005, c. 65, Pt. A, §2 (NEW).]

B. The administrator has not issued an order under section 16306 delaying effectiveness; or [2005, c. 65, Pt. A, §2 (NEW).]

C. The applicant or registrant has not requested that effectiveness be delayed. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

4. **Delay of effectiveness of registration statement.** The administrator may delay effectiveness once for not more than 90 days if the administrator determines the registration statement is not complete in all material respects and promptly notifies the applicant or registrant of that determination. The administrator may also delay effectiveness for a further period of not more than 30 days if the administrator determines that the delay is necessary or appropriate.

[2005, c. 65, Pt. A, §2 (NEW) .]

5. **Prospectus or offering document distribution may be required.** An order issued under this chapter may require as a condition of registration under this section that a prospectus or offering document containing a specified part of the information or record specified in subsection 2 be sent or given to each person to whom an offer is made, before or concurrently, with the earliest of:

A. The first offer made in a record to the person otherwise than by means of a public advertisement by or for the account of the issuer or another person on whose behalf the offering is being made or by an underwriter or broker-dealer that is offering part of an unsold allotment or subscription taken by the person as a participant in the distribution; [2005, c. 65, Pt. A, §2 (NEW).]

B. The confirmation of a sale made by or for the account of the person; [2005, c. 65, Pt. A, §2 (NEW).]

C. Payment pursuant to such a sale; or [2005, c. 65, Pt. A, §2 (NEW).]

D. Delivery of the security pursuant to such a sale. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

6. **Simplified statement.** For purposes of simplifying the registration statement for smaller offerings and promoting uniformity with other states, the administrator may adopt, by rule, a form to be used as the registration statement for securities being registered under this section and sold in offerings in which the aggregate offering price does not exceed the maximum amount specified in the rule. The form need not require all the information included in this section and may require information not included in this section.

[2005, c. 65, Pt. A, §2 (NEW) .]

6-A. **Short-form registration statement.** The administrator may adopt by rule a form to be used as a short-form registration statement for securities being registered under this section and sold in offerings in which:

A. The issuer of the security is a corporation or other entity having its principal place of business in this State and registered with the Secretary of State as an entity formed under the laws of this State or authorized to transact business within this State; [2013, c. 452, §1 (NEW).]

B. The aggregate amount of securities sold to all investors by the issuer within any 12-month period is not more than $1,000,000; [2013, c. 452, §1 (NEW).]

C. The aggregate amount of securities sold to any investor by the issuer, including any amount sold during the 12-month period preceding the date of the transaction, does not exceed $5,000, or a greater amount as the administrator may provide by rule or order, unless the investor is an accredited investor as defined in 17 Code of Federal Regulations, Section 230.501 (2013); [2013, c. 452, §1 (NEW).]

D. The offering meets the requirements of the federal exemption for limited offerings and sales of securities not exceeding $1,000,000 in 17 Code of Federal Regulations, Section 230.504 (2013); [2013, c. 452, §1 (NEW).]

E. The issuer files with the administrator, provides to investors and makes available to potential investors an offering document setting forth the following:

(1) The name, legal status, physical address and website address of the issuer;

(2) The names of the directors, officers and any persons occupying a similar status or performing similar functions;

(3) The name of each person holding more than 20% of the shares of the issuer;

(4) A description of the business of the issuer and the anticipated business plan of the issuer;

(5) A description of the financial condition of the issuer, including the following:

(a) For offerings that, together with all other offerings of the issuer within the preceding 12-month period, have, in the aggregate, offering amounts of $100,000 or less:

(i) The income tax returns filed by the issuer for the most recently completed year, if any; and

(ii) The financial statements of the issuer certified by the principal executive officer of the issuer to be true and complete in all material respects;

(b) For offerings that, together with all other offerings of the issuer within the preceding 12-month period, have, in the aggregate, offering amounts of more than $100,000 but not more than $500,000, financial statements reviewed by a public accountant who is independent of the issuer, using professional standards and procedures for the review or standards and procedures established by the administrator by rule; or

(c) For offerings that, together with all other offerings of the issuer within the preceding 12-month period, have, in the aggregate, offering amounts of more than $500,000, audited financial statements;

(6) A description of the stated purpose and intended use of the proceeds of the offering sought by the issuer;

(7) The offering amount, the deadline to reach the offering amount and regular updates regarding the progress of the issuer in meeting the offering amount;

(8) The price to the public of the securities or, if the price has not been determined, the method for determining the price as long as prior to the sale each investor is provided in writing the final price and all required disclosures with a reasonable opportunity to rescind the commitment to purchase the securities; and

(9) A description of the ownership and capital structure of the issuer, including:

(a) The terms of the securities being offered and all other classes of security of the issuer, including how those terms may be modified, and a summary of the differences between the classes of securities, including how the rights of the securities being offered may be materially limited, diluted or qualified by the rights of any other class of security of the issuer;

(b) A description of how the exercise of the rights held by the principal shareholders of the issuer could negatively impact the purchasers of the securities being offered;

(c) The name and ownership level of each existing shareholder who owns more than 20% of any class of the securities of the issuer;

(d) How the securities being offered are being valued and examples of methods for how those securities may be valued by the issuer in the future, including during subsequent corporate actions; and

(e) The risks to purchasers of the securities relating to minority ownership in the issuer and the risks associated with corporate actions, including additional issuances of shares, a sale of the issuer or of assets of the issuer and transactions with related parties; and [2013, c. 452, §1 (NEW).]

F. The issuer sets aside in a separate bank account all funds raised as part of the offering to be held until such time as the minimum offering amount is reached. If the minimum offering amount is not met within one year of the effective date of the offering, the issuer must return all funds to investors. [2013, c. 452, §1 (NEW).]

An issuer who elects to use a short-form registration statement pursuant to this subsection must comply with other requirements set forth by rule adopted or order issued under this chapter.

Notwithstanding section 16304, subsection 3, the administrator may provide by rule that a short-form registration statement filed under this subsection is immediately effective upon filing or becomes effective within some other stated period after filing, conditionally or otherwise.

[2013, c. 452, §1 (NEW) .]

7. **Rulemaking.** Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2005, c. 65, Pt. A, §2 (NEW) .]

SECTION HISTORY
2005, c. 65, §A2 (NEW). 2013, c. 452, §1 (AMD).

§16305. SECURITIES REGISTRATION FILINGS

1. **Who may file.** A registration statement may be filed by the issuer, a person on whose behalf the offering is to be made or a broker-dealer licensed under this chapter.

[2005, c. 65, Pt. A, §2 (NEW) .]

2. **Filing fee.** A person filing a registration statement shall pay a nonrefundable filing fee of $1,000 for each type or class of security offered, except that for a registration statement filed under section 16304 for an offering for which the total amount raised in state and out of state does not exceed $1,000,000 the nonrefundable filing fee is $300 for each type or class of security offered.

[2005, c. 65, Pt. A, §2 (NEW) .]

3. **Status of offering.** A registration statement filed under section 16303 or 16304 must specify:

A. The amount of securities to be offered in this State; [2005, c. 65, Pt. A, §2 (NEW).]

B. The states in which a registration statement or similar record in connection with the offering has been or is to be filed; [2005, c. 65, Pt. A, §2 (NEW).]

C. Any adverse order, judgment or decree issued in connection with the offering by a state securities regulator, the Securities and Exchange Commission or a court; and [2005, c. 65, Pt. A, §2 (NEW).]

D. The states in which a registration statement was filed and withdrawn. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

4. **Incorporation by reference.** A record filed under this chapter or the predecessor act within 5 years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the record is currently accurate.

[2005, c. 65, Pt. A, §2 (NEW) .]

5. **Nonissuer distribution.** In the case of a nonissuer distribution, information or a record may not be required under subsection 9 or section 16304 unless it is known to the person filing the registration statement or to the person on whose behalf the distribution is to be made or unless it can be furnished by those persons without unreasonable effort or expense.

[2005, c. 65, Pt. A, §2 (NEW) .]

6. **Escrow and impoundment.** A rule adopted or order issued under this chapter may require as a condition of registration that a security issued within the previous 5 years or to be issued to a promoter for a consideration substantially less than the public offering price or to a person for a consideration other than cash be deposited in escrow; and that the proceeds from the sale of the registered security in this State be impounded until the issuer receives a specified amount from the sale of the security either in this State or elsewhere. The conditions of any escrow or impoundment required under this subsection may be established by rule adopted or order issued under this chapter, but the administrator may not reject a depository institution solely because of its location in another state.

[2005, c. 65, Pt. A, §2 (NEW) .]

7. **Form of subscription.** A rule adopted or order issued under this chapter may require as a condition of registration that a security registered under this chapter be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each contract be filed under this chapter or preserved for a period specified by the rule or order, which may not be longer than 5 years.

[2005, c. 65, Pt. A, §2 (NEW) .]

8. **Effective period.** Except while a stop order is in effect under section 16306, a registration statement is effective for one year after its effective date or for any longer period designated in an order under this chapter during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by an underwriter or broker-dealer that is still offering part of an unsold allotment or subscription taken as a participant in the distribution. For the purposes of a nonissuer transaction, all outstanding securities of the same class identified in the registration statement as a security registered under this chapter are considered to be registered while the registration statement is effective. If any securities of the same class are outstanding, a registration statement may not be withdrawn until one year after its effective date. A registration statement may be withdrawn only with the approval of the administrator.

[2005, c. 65, Pt. A, §2 (NEW) .]

9. **Periodic reports.** While a registration statement is effective, a rule adopted or order issued under this chapter may require the person that filed the registration statement to file reports, not more often than quarterly, to keep the information or other record in the registration statement reasonably current and to disclose the progress of the offering.

[2005, c. 65, Pt. A, §2 (NEW) .]

10. **Posteffective amendments.** A registration statement may be amended after its effective date. The posteffective amendment becomes effective when the administrator so orders. If a posteffective amendment is made to increase the number of securities specified to be offered or sold, the person filing the amendment shall pay a nonrefundable registration fee of $300. A posteffective amendment relates back to the date of the offering of the additional securities being registered if, within one year after the date of the sale, the amendment is filed and the additional registration fee is paid.

[2005, c. 65, Pt. A, §2 (NEW) .]

11. **Rulemaking.** Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2005, c. 65, Pt. A, §2 (NEW) .]

SECTION HISTORY
2005, c. 65, §A2 (NEW).

§16306. DENIAL, SUSPENSION AND REVOCATION OF SECURITIES REGISTRATION

1. **Stop orders.** The administrator may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement if the administrator finds that the order is in the public interest and that:

A. The registration statement as of its effective date or before the effective date in the case of an order denying effectiveness, an amendment under section 16305, subsection 10 as of its effective date or a report under section 16305, subsection 9 is incomplete in a material respect or contains a statement that, in the light of the circumstances under which it was made, was false or misleading with respect to a material fact; [2005, c. 65, Pt. A, §2 (NEW).]

B. This chapter or a rule adopted or order issued under this chapter or a condition imposed under this chapter has been willfully violated, in connection with the offering, by the person filing the registration statement; by the issuer, a partner, officer or director of the issuer or a person having a similar status or performing a similar function or a promoter of the issuer or a person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or by an underwriter; [2005, c. 65, Pt. A, §2 (NEW).]

C. The security registered or sought to be registered is the subject of a permanent or temporary injunction of a court of competent jurisdiction or an administrative stop order or similar order issued under any federal, foreign or state law other than this chapter applicable to the offering, but the administrator may not institute a proceeding against an effective registration statement under this paragraph more than one year after the date of the order or injunction on which it is based, and the administrator may not issue an order under this paragraph on the basis of an order or injunction issued under the securities act of another state unless the order or injunction was based on conduct that would constitute, as of the date of the order, a ground for a stop order under this section; [2005, c. 65, Pt. A, §2 (NEW).]

D. The issuer's enterprise or method of business includes or would include activities that are unlawful where performed; [2005, c. 65, Pt. A, §2 (NEW).]

E. With respect to a security sought to be registered under section 16303, there has been a failure to comply with the undertaking required by section 16303, subsection 2, paragraph D; [2005, c. 65, Pt. A, §2 (NEW).]

F. The applicant or registrant has not paid the filing fee, but the administrator shall void the order if the deficiency is corrected; or [2005, c. 65, Pt. A, §2 (NEW).]

G. The offering:

(1) Will work or tend to work a fraud upon purchasers or would so operate;

(2) Has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions or other compensation, or promoters' profits or participations, or unreasonable amounts or kinds of options; or

(3) Is being made on terms that are unfair, unjust or inequitable. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

2. **Standards under subsection 1, paragraph G.** For purposes of promoting uniformity in the application of subsection 1, paragraph G, the administrator may take into consideration, among other factors, any relevant rules promulgated by the Securities and Exchange Commission and by the administrators in other jurisdictions.

[2005, c. 65, Pt. A, §2 (NEW) .]

3. **Institution of stop order.** The administrator may not institute a stop order proceeding against an effective registration statement on the basis of conduct or a transaction known to the administrator when the registration statement became effective unless the proceeding is instituted within 30 days after the registration statement became effective.

[2005, c. 65, Pt. A, §2 (NEW) .]

4. **Summary process.** The administrator may summarily revoke, deny, postpone or suspend the effectiveness of a registration statement pending final determination of an administrative proceeding. Upon the issuance of the order, the administrator shall promptly notify each person specified in subsection 5 that the order has been issued, the reasons for the revocation, denial, postponement or suspension and that within 15 days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the administrator, within 30 days after the date of service of the order, the order becomes final. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing for each person subject to the order, may modify or vacate the order or extend the order until final determination.

[2005, c. 65, Pt. A, §2 (NEW) .]

5. **Procedural requirements for stop order.** A stop order may not be issued under this section without:

A. Appropriate notice to the applicant or registrant, the issuer and the person on whose behalf the securities are to be or have been offered; [2005, c. 65, Pt. A, §2 (NEW).]

B. An opportunity for hearing; and [2005, c. 65, Pt. A, §2 (NEW).]

C. Findings of fact and conclusions of law in a record in accordance with the Maine Administrative Procedure Act. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

6. **Modification or vacation of stop order.** The administrator may modify or vacate a stop order issued under this section if the administrator finds that the conditions that caused its issuance have changed or that it is necessary or appropriate in the public interest or for the protection of investors.

[2005, c. 65, Pt. A, §2 (NEW) .]

7. **Appointment of presiding officer.** For purposes of any hearing conducted pursuant to this section, the administrator may appoint a qualified person to preside at the hearing and to make proposed findings of fact and conclusions of law. The responsibility for the entry of the final findings of fact and conclusions of law and for the issuance of any final order remains with the administrator.

[2007, c. 14, §4 (NEW) .]

SECTION HISTORY
2005, c. 65, §A2 (NEW). 2007, c. 14, §4 (AMD).

§16307. WAIVER AND MODIFICATION

By rule issued or order adopted under this chapter, the administrator may waive or modify, in whole or in part, any or all of the requirements of sections 16302, 16303, and 16304 or the requirement of any information or record in a registration statement or in a periodic report filed pursuant to section 16305, subsection 9. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2005, c. 65, Pt. A, §2 (NEW).]

SECTION HISTORY
2005, c. 65, §A2 (NEW).

Subchapter 4: BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS, INVESTMENT ADVISER REPRESENTATIVES AND FEDERAL COVERED INVESTMENT ADVISERS HEADING: PL 2005, C. 65, PT. A, §2 (NEW)

§16401. BROKER-DEALER LICENSING REQUIREMENT AND EXEMPTIONS

1. **Licensing requirement.** It is unlawful for a person to transact business in this State as a broker-dealer unless the person is licensed under this chapter as a broker-dealer or is exempt from licensing as a broker-dealer under subsection 2 or 4.

[2005, c. 65, Pt. A, §2 (NEW) .]

2. **Exemptions from licensing.** The following persons are exempt from the licensing requirement of subsection 1:

A. A broker-dealer without a place of business in this State if its only transactions effected in this State are with:

(1) The issuer of the securities involved in the transactions;

(2) A broker-dealer licensed as a broker-dealer under this chapter or not required to be licensed as a broker-dealer under this chapter, except when the person is acting as a clearing broker-dealer;

(3) An institutional investor;

(4) A nonaffiliated federal covered investment adviser with investments under management in excess of $100,000,000 acting for the account of others pursuant to discretionary authority in a signed record;

(5) A bona fide preexisting customer whose principal place of residence is not in this State and the person is registered as a broker-dealer under the federal Securities Exchange Act of 1934 or not required to be registered under the federal Securities Exchange Act of 1934 and is registered or licensed under the securities act of the state in which the customer maintains a principal place of residence;

(6) A bona fide preexisting customer whose principal place of residence is in this State but was not present in this State when the customer relationship was established, if:

(a) The broker-dealer is registered under the federal Securities Exchange Act of 1934 or not required to be registered under the federal Securities Exchange Act of 1934 and is registered or licensed under the securities laws of the state in which the customer relationship was established and where the customer had maintained a principal place of residence; and

(b) Within 45 days after the customer's first transaction in this State, the person files an application for licensing as a broker-dealer in this State and no further transactions are effected until the license is effective. Any broker-dealer may seek an order granting a temporary exemption under subparagraph (7) while the application is pending; and

(7) Any other person exempted by rule adopted or order issued under this chapter; and [2005, c. 65, Pt. A, §2 (NEW).]

B. A person that deals solely in United States government securities and is supervised as a dealer in government securities by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation or the United States Department of the Treasury, Office of Thrift Supervision or Comptroller of the Currency. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

3. **Limits on employment or association.** It is unlawful for a broker-dealer, or for an issuer engaged in offering, offering to purchase, purchasing or selling securities in this State, directly or indirectly, to employ or associate with an individual to engage in an activity related to securities transactions in this State if the license of the individual is suspended or revoked or the individual is barred from employment or association with a broker-dealer, an issuer, an investment adviser or a federal covered investment adviser by an order of the administrator under this chapter, the Securities and Exchange Commission or a self-regulatory organization. A broker-dealer or issuer does not violate this subsection if the broker-dealer or issuer sustains the burden of proof that the broker-dealer or issuer did not know and in the exercise of reasonable care could not have known of the suspension, revocation or bar. Upon request from a broker-dealer or issuer and for good cause, an order under this chapter may modify or waive, in whole or in part, the application of the prohibitions of this subsection to the broker-dealer.

[2005, c. 65, Pt. A, §2 (NEW) .]

4. **Foreign transactions.** A rule adopted or order issued under this chapter may permit:

A. A broker-dealer that is registered or licensed in Canada or other foreign jurisdiction and that does not have a place of business in this State to effect transactions in securities with or for, or attempt to effect the purchase or sale of any securities by:

(1) An individual from Canada or other foreign jurisdiction who is temporarily present in this State and with whom the broker-dealer had a bona fide customer relationship before the individual entered the United States;

(2) An individual from Canada or other foreign jurisdiction who is present in this State and whose transactions are in a self-directed tax advantaged retirement plan of which the individual is the holder or contributor in that foreign jurisdiction; or

(3) An individual who is present in this State with whom the broker-dealer customer relationship arose while the individual was temporarily or permanently resident in Canada or the other foreign jurisdiction; and [2005, c. 65, Pt. A, §2 (NEW).]

B. An agent who represents a broker-dealer that is exempt under this subsection to effect transactions in securities or attempt to effect the purchase or sale of securities in this State as permitted for a broker-dealer described in paragraph A. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

5. **Rulemaking.** Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2005, c. 65, Pt. A, §2 (NEW) .]

SECTION HISTORY
2005, c. 65, §A2 (NEW).

§16402. AGENT LICENSING REQUIREMENT AND EXEMPTIONS

1. **Licensing requirement.** It is unlawful for an individual to transact business in this State as an agent unless the individual is licensed under this chapter as an agent or is exempt from licensing as an agent under subsection 2.

[2005, c. 65, Pt. A, §2 (NEW) .]

2. **Exemptions from licensing.** The following individuals are exempt from the licensing requirement of subsection 1:

A. An individual who represents a broker-dealer in effecting transactions in this State limited to those described in Section 15(h)(2) of the federal Securities Exchange Act of 1934, 15 United States Code, Section 78(o)(2); [2005, c. 65, Pt. A, §2 (NEW).]

B. An individual who represents a broker-dealer that is exempt under section 16401, subsection 2 or 4; [2005, c. 65, Pt. A, §2 (NEW).]

C. An individual who represents an issuer with respect to an offer or sale of the issuer's own securities or those of the issuer's parent or any of the issuer's subsidiaries and who is not compensated in connection with the individual's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities; [2005, c. 65, Pt. A, §2 (NEW).]

D. An individual who is a bona fide officer, director, partner or member of the issuer, or an individual occupying a similar status or performing similar functions, or a bona fide employee of the issuer who represents an issuer and who effects transactions in the issuer's securities exempted by section 16202, other than section 16202, subsections 11, 25 and 26; [2005, c. 65, Pt. A, §2 (NEW).]

E. An individual who represents an issuer that effects transactions solely in federal covered securities of the issuer, but an individual who effects transactions in a federal covered security under Section 18(b)(3) or 18(b)(4)(D) of the federal Securities Act of 1933, 15 United States Code, Section 77r(b)(3) or 77r(b)(4)(D) is not exempt if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities; [2005, c. 65, Pt. A, §2 (NEW).]

F. An individual who represents a broker-dealer licensed in this State under section 16401, subsection 1 or exempt from licensing under section 16401, subsection 2 in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of $100,000,000 acting for the account of others pursuant to discretionary authority in a signed record; [2005, c. 65, Pt. A, §2 (NEW).]

G. An individual who represents an issuer in connection with the purchase of the issuer's own securities; [2005, c. 65, Pt. A, §2 (NEW).]

H. An individual who represents an issuer and who restricts participation to performing clerical or ministerial acts; or [2005, c. 65, Pt. A, §2 (NEW).]

I. Any other individual exempted by rule adopted or order issued under this chapter. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

3. **License effective only while employed or associated.** The license of an agent is effective only while the agent is employed by or associated with a broker-dealer licensed under this chapter or an issuer that is offering, selling or purchasing its securities in this State and is effective only with respect to transactions effected as an employee or otherwise on behalf of said broker-dealer or issuer.

[2005, c. 65, Pt. A, §2 (NEW) .]

4. **Limit on employment or association.** It is unlawful for a broker-dealer, or an issuer engaged in offering, selling or purchasing securities in this State, to employ or associate with an agent who transacts business in this State on behalf of broker-dealers or issuers unless the agent is licensed under subsection 1 or exempt from licensing under subsection 2.

[2005, c. 65, Pt. A, §2 (NEW) .]

5. **Limit on affiliations.** An individual may not act as an agent for more than one broker-dealer or one issuer at a time, unless the broker-dealers and the issuers for which the agent acts are affiliated by direct or indirect common control or are authorized by rule or order under this chapter.

[2005, c. 65, Pt. A, §2 (NEW) .]

6. **Rulemaking.** Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2005, c. 65, Pt. A, §2 (NEW) .]

SECTION HISTORY
2005, c. 65, §A2 (NEW).

§16403. INVESTMENT ADVISER LICENSING REQUIREMENT AND EXEMPTIONS

1. **Licensing requirement.** It is unlawful for a person to transact business in this State as an investment adviser unless the person is licensed under this chapter as an investment adviser or is exempt from licensing as an investment adviser under subsection 2.

[2005, c. 65, Pt. A, §2 (NEW) .]

2. **Exemptions from licensing.** The following persons are exempt from the licensing requirement of subsection 1:

A. A person without a place of business in this State that is registered or licensed under the securities act of the state in which the person has its principal place of business if its only clients in this State are:

(1) Federal covered investment advisers, investment advisers licensed under this chapter or broker-dealers licensed under this chapter;

(2) Institutional investors;

(3) Bona fide preexisting clients whose principal places of residence are not in this State if the investment adviser is registered or licensed under the securities act of the state in which the clients maintain principal places of residence; or

(4) Any other client exempted by rule adopted or order issued under this chapter; [2005, c. 65, Pt. A, §2 (NEW).]

B. A person without a place of business in this State if the person has had, during the preceding 12 months, not more than 5 clients that are resident in this State in addition to those specified under paragraph A; or [2005, c. 65, Pt. A, §2 (NEW).]

C. Any other person exempted by rule adopted or order issued under this chapter. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

3. **Limits on employment or association.** It is unlawful for an investment adviser, directly or indirectly, to employ or associate with an individual to engage in an activity related to investment advice in this State if the license of the individual is suspended or revoked or the individual is barred from employment or association with an investment adviser, federal covered investment adviser or broker-dealer by an order under this chapter, the Securities and Exchange Commission or a self-regulatory organization, unless the investment adviser sustains the burden of proof that the investment adviser did not know, and in the exercise of reasonable care could not have known, of the suspension, revocation or bar. Upon request from the investment adviser and for good cause, the administrator, by order, may waive, in whole or in part, the application of the prohibitions of this subsection to the investment adviser.

[2005, c. 65, Pt. A, §2 (NEW) .]

4. **Investment adviser representative licensing required.** It is unlawful for an investment adviser to employ or associate with an individual required to be licensed under this chapter as an investment adviser representative who transacts business in this State on behalf of the investment adviser unless the individual is licensed under section 16404, subsection 1 or is exempt from licensing under section 16404, subsection 2.

[2005, c. 65, Pt. A, §2 (NEW) .]

5. **Rulemaking.** Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2005, c. 65, Pt. A, §2 (NEW) .]

SECTION HISTORY
2005, c. 65, §A2 (NEW).

§16404. INVESTMENT ADVISER REPRESENTATIVE LICENSING REQUIREMENT AND EXEMPTIONS

1. **Licensing requirement.** It is unlawful for an individual to transact business in this State as an investment adviser representative unless the individual is licensed under this chapter as an investment adviser representative or is exempt from licensing as an investment adviser representative under subsection 2.

[2005, c. 65, Pt. A, §2 (NEW) .]

2. **Exemptions from licensing.** The following individuals are exempt from the licensing requirement of subsection 1:

A. An individual who is employed by or associated with an investment adviser that is exempt from licensing under section 16403, subsection 2 or a federal covered investment adviser that is excluded from the notice filing requirements of section 16405; and [2005, c. 65, Pt. A, §2 (NEW).]

B. Any other individual exempted by rule adopted or order issued under this chapter. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

3. **License effective only while employed or associated.** The license of an investment adviser representative is effective only while the investment adviser representative is employed by or associated with an investment adviser licensed under this chapter or a federal covered investment adviser that has made or is required to make a notice filing under section 16405 and is effective only with respect to conduct engaged in as an employee or otherwise on behalf of said investment adviser.

[2005, c. 65, Pt. A, §2 (NEW) .]

4. **Limit on affiliations.** An individual may transact business as an investment adviser representative for more than one investment adviser or federal covered investment adviser unless a rule adopted or order issued under this chapter prohibits or limits an individual from acting as an investment adviser representative for more than one investment adviser or federal covered investment adviser.

[2005, c. 65, Pt. A, §2 (NEW) .]

5. **Limits on employment or association.** It is unlawful for an individual acting as an investment adviser representative, directly or indirectly, to conduct business in this State on behalf of an investment adviser or a federal covered investment adviser if the license of the individual as an investment adviser representative is suspended or revoked or the individual is barred from employment or association with an investment adviser or a federal covered investment adviser by an order under this chapter, the Securities and Exchange Commission or a self-regulatory organization. Upon request from a federal covered investment adviser and for good cause, the administrator, by order issued, may waive, in whole or in part, the application of the requirements of this subsection to the federal covered investment adviser.

[2005, c. 65, Pt. A, §2 (NEW) .]

6. **Referral fees.** An investment adviser licensed under this chapter, a federal covered investment adviser that has filed a notice under section 16405 or a broker-dealer licensed under this chapter is not required to employ or associate with an individual as an investment adviser representative if the only compensation paid to the individual for a referral of investment advisory clients is paid to an investment adviser licensed under this chapter, a federal covered investment adviser who has filed a notice under section 16405 or a broker-dealer licensed under this chapter with which the individual is employed or associated as an investment adviser representative.

[2005, c. 65, Pt. A, §2 (NEW) .]

7. **Rulemaking.** Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2005, c. 65, Pt. A, §2 (NEW) .]

SECTION HISTORY
2005, c. 65, §A2 (NEW).

§16405. FEDERAL COVERED INVESTMENT ADVISER NOTICE FILING REQUIREMENT

1. **Notice filing requirement.** Except with respect to a federal covered investment adviser described in subsection 2, it is unlawful for a federal covered investment adviser to transact business in this State as a federal covered investment adviser unless the federal covered investment adviser complies with subsection 3.

[2005, c. 65, Pt. A, §2 (NEW) .]

2. **Notice filing requirement not required.** The following federal covered investment advisers are not required to comply with subsection 3:

A. A federal covered investment adviser without a place of business in this State if its only clients in this State are:

(1) Federal covered investment advisers, investment advisers licensed under this chapter and broker-dealers licensed under this chapter;

(2) Institutional investors;

(3) Bona fide preexisting clients whose principal places of residence are not in this State; or

(4) Other clients specified by rule adopted or order issued under this chapter; [2005, c. 65, Pt. A, §2 (NEW).]

B. A federal covered investment adviser without a place of business in this State if the person has had, during the preceding 12 months, not more than 5 clients that are resident in this State in addition to those specified under paragraph A; and [2005, c. 65, Pt. A, §2 (NEW).]

C. Any other person excluded by rule adopted or order issued under this chapter. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

3. **Notice filing procedure.** A person acting as a federal covered investment adviser that is not excluded under subsection 2 shall file a notice, a consent to service of process complying with section 16611, and such records as have been filed with the Securities and Exchange Commission under the federal Investment Advisers Act of 1940 and pay the fees specified in section 16410, subsection 1, paragraph E.

[2005, c. 65, Pt. A, §2 (NEW) .]

4. **Effectiveness of filing.** The notice under subsection 3 becomes effective upon its filing.

[2005, c. 65, Pt. A, §2 (NEW) .]

5. **Rulemaking.** Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2005, c. 65, Pt. A, §2 (NEW) .]

SECTION HISTORY
2005, c. 65, §A2 (NEW).

§16406. LICENSING OF BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES

1. **Application for initial license.** A person becomes licensed as a broker-dealer, agent, investment adviser or investment adviser representative by filing an application and a consent to service of process complying with section 16611 and paying the fee specified in section 16410 and any fees charged by the designee of the administrator for processing the filing. The application must contain:

A. The information or record required for the filing of a uniform application; and [2005, c. 65, Pt. A, §2 (NEW).]

B. Upon request by the administrator, any other financial or other information or record that the administrator determines is appropriate. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

2. **Amendment.** If the information or record contained in an application filed under subsection 1 is or becomes inaccurate or incomplete in a material respect, the licensee shall promptly file a correcting amendment.

[2005, c. 65, Pt. A, §2 (NEW) .]

3. **Effectiveness of licensing.** If an order is not in effect and a proceeding is not pending under section 16412, a license becomes effective no later than noon on the 45th day after a completed application is filed, provided that all examination and training requirements imposed under section 16412, subsection 5 have been satisfied and provided that the license has not been denied. The administrator may authorize an earlier effective date of licensing.

[2005, c. 65, Pt. A, §2 (NEW) .]

4. **License renewal.** A license is effective until midnight on December 31st of the year for which the application for licensing is filed. Unless an order is in effect under section 16412, a license may be automatically renewed each year by filing such records as are required by the administrator, by paying the fee specified in section 16410 and by paying costs charged by the designee of the administrator for processing the filings.

[2005, c. 65, Pt. A, §2 (NEW) .]

5. **Additional conditions or waivers.** A rule adopted or order issued under this chapter may impose other conditions on licensing or may waive, in whole or in part, specific requirements in connection with licensing as are in the public interest and for the protection of investors. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2005, c. 65, Pt. A, §2 (NEW) .]

SECTION HISTORY
2005, c. 65, §A2 (NEW).

§16407. SUCCESSION AND CHANGE IN LICENSING OF BROKER-DEALER OR INVESTMENT ADVISER

1. **Succession.** A broker-dealer or investment adviser may succeed to the current license of another broker-dealer or investment adviser or a notice filing of a federal covered investment adviser, and a federal covered investment adviser may succeed to the current license of an investment adviser or notice filing of another federal covered investment adviser, by filing as a successor an application for licensing pursuant to section 16401 or 16403 or a notice pursuant to section 16405 for the unexpired portion of the current license or notice filing.

[2005, c. 65, Pt. A, §2 (NEW) .]

2. **Organizational change.** A broker-dealer or investment adviser that changes its form of organization or state of incorporation or organization may continue its license by filing an amendment to its license if the change does not involve a material change in its financial condition or management. The amendment becomes effective when filed or on a date designated by the licensee in its filing. The new organization is a successor to the original licensee for the purposes of this chapter. If there is a material change in financial condition or management, the broker-dealer or investment adviser shall file a new application for licensing. A predecessor

licensed under this chapter shall stop conducting its securities business other than winding down transactions and shall file for withdrawal of broker-dealer or investment adviser licensing within 45 days after filing its amendment to effect succession.

[2005, c. 65, Pt. A, §2 (NEW) .]

3. **Name change.** A broker-dealer or investment adviser that changes its name may continue its license by filing an amendment to its license. The amendment becomes effective when filed or on a date designated by the licensee.

[2005, c. 65, Pt. A, §2 (NEW) .]

4. **Change of ownership or control.** A change of ownership or control of a broker-dealer or investment adviser may require the filing of a new application pursuant to a rule adopted or order issued under this chapter. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2005, c. 65, Pt. A, §2 (NEW) .]

SECTION HISTORY
2005, c. 65, §A2 (NEW).

§16408. TERMINATION OF EMPLOYMENT OR ASSOCIATION OF AGENT AND INVESTMENT ADVISER REPRESENTATIVE AND TRANSFER OF EMPLOYMENT OR ASSOCIATION

1. **Notice of termination.** If an agent licensed under this chapter terminates employment by or association with a broker-dealer or issuer, or if an investment adviser representative licensed under this chapter terminates employment by or association with an investment adviser or federal covered investment adviser, or if either licensee terminates activities that require licensing as an agent or investment adviser representative, the broker-dealer, issuer, investment adviser or federal covered investment adviser shall promptly file a notice of termination. If the licensee learns that the broker-dealer, issuer, investment adviser or federal covered investment adviser has not filed the notice, the licensee shall promptly file it.

[2005, c. 65, Pt. A, §2 (NEW) .]

2. **Transfer of employment or association.** If an agent licensed under this chapter terminates employment by or association with a broker-dealer licensed under this chapter and begins employment by or association with another broker-dealer licensed under this chapter, or if an investment adviser representative licensed under this chapter terminates employment by or association with an investment adviser licensed under this chapter or a federal covered investment adviser that has filed a notice under section 16405 and begins employment by or association with another investment adviser licensed under this chapter or a federal covered investment adviser that has filed a notice under section 16405, upon the filing by or on behalf of the licensee, within 30 days after the termination, of an application for licensing that complies with the requirement of section 16406, subsection 1 and payment of the filing fee required under section 16410, the license of the agent or investment adviser representative is:

A. Immediately effective as of the date of the completed filing if the agent's Central Registration Depository record or successor record or the investment adviser representative's Investment Adviser Registration Depository record or successor record does not contain a new or amended disciplinary disclosure within the previous 12 months; or [2005, c. 65, Pt. A, §2 (NEW).]

B. Temporarily effective as of the date of the completed filing if the agent's Central Registration Depository record or successor record or the investment adviser representative's Investment Adviser Registration Depository record or successor record contains a new or amended disciplinary disclosure within the previous 12 months. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

3. **Withdrawal of temporary license.** The administrator may withdraw a temporary license if there are or were grounds for discipline as specified in section 16412 and the administrator does so within 30 days after the filing of the application. If the administrator does not withdraw the temporary license within the 30-day period, licensing becomes automatically effective on the 31st day after filing.

[2005, c. 65, Pt. A, §2 (NEW) .]

4. **Power to prevent licensing.** The administrator may prevent the effectiveness of a transfer of an agent or investment adviser representative under subsection 2, paragraph A or B based on the public interest and the protection of investors or based upon a request for other information pursuant to section 16406, subsection 1, paragraph B.

[2005, c. 65, Pt. A, §2 (NEW) .]

5. **Termination of license or application for licensing.** If the administrator determines that a licensee or applicant for licensing is no longer in existence or has ceased to act as a broker-dealer, agent, investment adviser or investment adviser representative, or is the subject of an adjudication of incapacity or is subject to the control of a committee, conservator or guardian, or can not reasonably be located, a rule adopted or order issued under this chapter may require the license be canceled or terminated or the application denied. The administrator may reinstate a canceled or terminated license, with or without hearing, and may make the license retroactive. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2005, c. 65, Pt. A, §2 (NEW) .]

SECTION HISTORY
2005, c. 65, §A2 (NEW).

§16409. WITHDRAWAL OR NONRENEWAL OF LICENSING OF BROKER-DEALER, AGENT, INVESTMENT ADVISER AND INVESTMENT ADVISER REPRESENTATIVE

Withdrawal of licensing by a broker-dealer, agent, investment adviser or investment adviser representative becomes effective 60 days after the filing of the application to withdraw or within any shorter period authorized by the administrator, unless a revocation or suspension proceeding is pending when the application is filed. If a proceeding is pending, the administrator shall make a determination with respect to the withdrawal application as part of the proceeding. The administrator may institute a revocation or suspension proceeding under section 16412 within one year after the withdrawal became effective automatically or within one year of a license's becoming ineffective due to nonrenewal under section 16406 and issue a revocation or suspension order as of the last date on which licensing was effective. [2013, c. 39, §1 (AMD).]

SECTION HISTORY
2005, c. 65, §A2 (NEW). 2013, c. 39, §1 (AMD).

§16410. FILING FEES

1. **Fees established by administrator.** The administrator shall establish by rule fees in accordance with the following:

A. A fee not to exceed $500 for an application for licensing as a broker-dealer and renewal of licensing as a broker-dealer. If the filing results in a denial or withdrawal, the administrator shall retain the fee; [2005, c. 65, Pt. A, §2 (NEW).]

B. A fee not to exceed $200 for an application for licensing as an agent and renewal of licensing as an agent. If the filing results in a denial or withdrawal, the administrator shall retain the fee; [2005, c. 65, Pt. A, §2 (NEW).]

C. A fee not to exceed $500 for an application for licensing as an investment adviser and renewal of licensing as an investment adviser. If the filing results in a denial or withdrawal, the administrator shall retain the fee; [2005, c. 65, Pt. A, §2 (NEW).]

D. A fee not to exceed $200 for an application for licensing as an investment adviser representative and renewal of licensing as an investment adviser representative. If the filing results in a denial or withdrawal, the administrator shall retain the fee; [2005, c. 65, Pt. A, §2 (NEW).]

E. An amount not to exceed $500 for an initial fee and annual notice fee for a federal covered investment adviser required to file a notice under section 16405. If the filing results in a withdrawal, the administrator shall retain the fee; and [2005, c. 65, Pt. A, §2 (NEW).]

F. An amount not to exceed $200 for an initial fee and annual renewal fee for each branch office in this State. If the filing results in a withdrawal, the administrator shall retain the fee. For purposes of this paragraph, "branch office" means any office of a broker-dealer or investment adviser located in this State, other than the principal place of business of the broker-dealer or investment adviser. Only one branch office fee is due if an office is a branch office of both a broker-dealer and an investment adviser affiliated by direct or indirect common control. [2009, c. 2, §91 (COR).]

[2009, c. 2, §91 (COR) .]

2. **Payment.** A person required to pay a filing or notice fee under this section may transmit the fee through or to a designee as a rule or order provides under this chapter.

[2005, c. 65, Pt. A, §2 (NEW) .]

3. **Active duty renewal fee waiver.** The administrator may waive the renewal fee under subsection 1, paragraph B or D for a licensed agent or investment adviser representative who is a member of the National Guard or the Reserves of the United States Armed Forces under an order to active duty for a period of more than 30 days.

[2005, c. 65, Pt. A, §2 (NEW) .]

4. **Rulemaking.** Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2005, c. 65, Pt. A, §2 (NEW) .]

SECTION HISTORY
2005, c. 65, §A2 (NEW). RR 2009, c. 2, §91 (COR).

§16411. POSTLICENSING REQUIREMENTS

1. **Financial requirements.** A rule adopted or order issued under this chapter may establish minimum financial requirements for broker-dealers licensed or required to be licensed under this chapter and investment advisers licensed or required to be licensed under this chapter. If a licensed broker-dealer or investment adviser believes, or has reasonable cause to believe, that any requirement imposed under this subsection is not being met, the licensed broker-dealer or investment adviser shall promptly notify the administrator of its current financial condition.

[2005, c. 65, Pt. A, §2 (NEW) .]

2. **Financial reports.** A broker-dealer licensed or required to be licensed under this chapter and an investment adviser licensed or required to be licensed under this chapter shall file such financial and other reports as are required by rule adopted or order issued under this chapter. If the information contained in a record filed under this subsection is or becomes inaccurate or incomplete in a material respect, the licensee shall promptly file a correcting amendment.

[2005, c. 65, Pt. A, §2 (NEW) .]

3. **Record keeping.** Record-keeping requirements are as follows:

A. A broker-dealer licensed or required to be licensed under this chapter and an investment adviser licensed or required to be licensed under this chapter shall make and maintain those accounts, correspondence, memoranda, papers, books and other records that are:

(1) Required by rule adopted or order issued under this chapter; or

(2) If no rule or order as set forth in subparagraph (1) has been adopted under this chapter, in compliance with the record-keeping requirements of the federal Securities Exchange Act of 1934 in the case of a broker-dealer or the federal Investment Advisers Act of 1940 in the case of an investment adviser; [2005, c. 65, Pt. A, §2 (NEW).]

B. Broker-dealer records required to be maintained under paragraph A may be maintained in computer or microform format or any other form of data storage, provided that the records are readily accessible to the administrator; [2005, c. 65, Pt. A, §2 (NEW).]

C. Investment adviser records required to be maintained under paragraph A may be maintained in any form of data storage required by rule adopted or order issued under this chapter; and [2005, c. 65, Pt. A, §2 (NEW).]

D. Records required to be maintained under this section must be preserved for 6 years unless the administrator, by rule, specifies either a longer or shorter period for a particular type or class of records. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

4. **Audits or inspections.** The records of a broker-dealer licensed or required to be licensed under this chapter and of an investment adviser licensed or required to be licensed under this chapter are subject to such periodic, special or other audits or inspections by a representative of the administrator, within or without this State, as the administrator considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The administrator may copy, require the licensee to copy and remove for audit or inspection copies of all records the administrator reasonably considers necessary or appropriate to conduct the audit or inspection. Broker-dealers, agents, investment advisers and investment adviser representatives shall make their records available to the administrator in a readable form. The administrator may assess a reasonable charge for conducting an audit or inspection under this subsection.

[2005, c. 65, Pt. A, §2 (NEW) .]

5. **Custody and discretionary authority bond or insurance.** A rule adopted or order issued under this chapter may require a broker-dealer or investment adviser that has custody of or discretionary authority over funds or securities of a customer or client to obtain insurance or post a bond or other satisfactory form of security. The administrator may determine the requirements of the insurance, bond or other satisfactory form of security. The insurance, bond or other satisfactory form of security must permit an action by a person to enforce any liability on the insurance, bond or other satisfactory form of security if instituted within the time limitations in section 16509, subsection 10, paragraph B.

[2005, c. 65, Pt. A, §2 (NEW) .]

6. **Requirements for custody.** Subject to Section 15(h) of the federal Securities Exchange Act of 1934, 15 United States Code, Section 78o(h) or Section 222 of the federal Investment Advisers Act of 1940, 15 United States Code, Section 80b 22, an agent may not have custody of funds or securities of a customer except under the supervision of a broker-dealer and an investment adviser representative may not have custody of funds or securities of a client except under the supervision of an investment adviser or a federal covered investment adviser. A rule adopted or order issued under this chapter may prohibit, limit or impose conditions on a broker-dealer regarding custody of funds or securities of a customer and on an investment adviser regarding custody of securities or funds of a client.

[2005, c. 65, Pt. A, §2 (NEW) .]

7. **Investment adviser brochure rule.** With respect to an investment adviser licensed or required to be licensed under this chapter, a rule adopted or order issued under this chapter may require that information or other record be furnished or disseminated to clients or prospective clients in this State as necessary or appropriate in the public interest and for the protection of investors and advisory clients.

[2005, c. 65, Pt. A, §2 (NEW) .]

8. **Continuing education.** A rule adopted or order issued under this chapter may require an individual licensed under section 16402 or 16404 to participate in a continuing education program approved by the Securities and Exchange Commission and administered by a self-regulatory organization or another continuing education program approved by the administrator.

[2005, c. 65, Pt. A, §2 (NEW) .]

9. **Privacy provisions.** A broker-dealer licensed or required to be licensed under this chapter and an investment adviser licensed or required to be licensed under this chapter shall comply with the privacy provisions of the federal Gramm-Leach-Bliley Act, 15 United States Code, Section 6801 et seq. (1999) and the implementing Regulation S-P, federal Privacy of Consumer Financial Information, 17 Code of Federal Regulations, Part 248 (2001) adopted by the Securities and Exchange Commission. This subsection is not intended to permit the release of health care information except as permitted by Title 22, section 1711-C or Title 24-A, chapter 24.

[2005, c. 65, Pt. A, §2 (NEW) .]

10. **Rulemaking.** Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2005, c. 65, Pt. A, §2 (NEW) .]

SECTION HISTORY
2005, c. 65, §A2 (NEW).

§16412. DENIAL, REVOCATION, SUSPENSION, WITHDRAWAL, RESTRICTION, CONDITION OR LIMITATION OF LICENSING

1. **Disciplinary conditions, applicants.** If the administrator finds that the order is in the public interest and subsection 4 authorizes the action, an order issued under this chapter may deny an application, or may condition or limit licensing, of an applicant to be a broker-dealer, agent, investment adviser or investment adviser representative.

[2007, c. 14, §5 (AMD) .]

2. **Disciplinary conditions, licensees.** If the administrator finds that the order is in the public interest and subsection 4 authorizes the action, an order issued under this chapter may revoke, suspend, condition or limit the license of a licensee. Notwithstanding this subsection, the administrator may not:

A. Institute a revocation or suspension proceeding under this subsection based on an order issued under a law of another state that is reported to the administrator or a designee of the administrator more than one year after that state's order is reported; or [2005, c. 65, Pt. A, §2 (NEW).]

B. Under subsection 4, paragraph E, subparagraph (1) or (2), issue an order on the basis of an order issued under the securities act of another state unless the other state's order was based on conduct for which subsection 4 would authorize the action had the conduct occurred in this State. [2005, c. 65, Pt. A, §2 (NEW).]

[2007, c. 14, §6 (AMD) .]

3. **Disciplinary penalties, licensees.** If the administrator finds that the order is in the public interest and subsection 4, paragraph A, B, C, D, E, F, H, I, J, L or M authorizes the action, an order under this chapter may censure, impose a bar on or impose a civil fine in an amount not to exceed a maximum of $5,000 per violation on a licensee. For a violation involving an investor 65 years of age or older, the amount of the civil fine may be doubled to an amount not to exceed a maximum of $10,000 per violation.

[2011, c. 37, §1 (AMD) .]

4. **Grounds for discipline.** A person may be disciplined under subsections 1 to 3 if the person or, in the case of a broker-dealer or investment adviser, the broker-dealer or investment adviser, a partner, officer or director of the broker-dealer or investment adviser, a person occupying a similar status or performing similar functions or a person directly or indirectly controlling the broker-dealer or investment adviser:

A. Has filed an application for licensing in this State under this chapter or the predecessor act within the previous 10 years that, as of the effective date of licensing or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact; [2005, c. 65, Pt. A, §2 (NEW).]

B. Intentionally or knowingly violated or intentionally or knowingly failed to comply with this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act within the previous 10 years; [2005, c. 65, Pt. A, §2 (NEW).]

C. Has pleaded guilty or nolo contendere to or been convicted of murder or a Class A, B or C crime or a felony or within the previous 10 years has pleaded guilty or nolo contendere to or been convicted of a Class D or E crime or a misdemeanor involving a security, a commodity future or option contract or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking or finance or any crime indicating a lack of fitness to engage in the securities business; [2005, c. 65, Pt. A, §2 (NEW).]

D. Is enjoined or restrained by a court of competent jurisdiction in any action from engaging in or continuing an act, practice or course of business involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking or finance; [2005, c. 65, Pt. A, §2 (NEW).]

E. Is the subject of an order, issued after notice and opportunity for hearing by:

(1) The securities or other financial services regulator of a state or by the Securities and Exchange Commission, a self-regulatory organization or other federal agency denying, revoking, barring or suspending registration or licensing as a broker-dealer, agent, investment adviser, investment adviser representative or federal covered investment adviser;

(2) The securities regulator of a state or the Securities and Exchange Commission against a broker-dealer, agent, investment adviser, investment adviser representative or federal covered investment adviser;

(3) The Securities and Exchange Commission or a self-regulatory organization suspending or expelling the registrant or licensee from membership in the self-regulatory organization;

(4) A court adjudicating a United States Postal Service fraud order;

(5) The insurance regulator of a state denying, suspending or revoking registration or licensing as an insurance producer or its equivalent;

(6) A depository institution or financial services regulator suspending or barring the person from the depository institution or other financial services business; or

(7) The United States Commodity Futures Trading Commission denying, suspending or revoking registration under the federal Commodity Exchange Act; [2005, c. 65, Pt. A, §2 (NEW).]

F. Is the subject of an adjudication or determination, after notice and opportunity for hearing, by the Securities and Exchange Commission, the United States Commodity Futures Trading Commission, the Federal Trade Commission, a federal depository institution regulator or a depository institution, insurance or other financial services regulator of a state that the person intentionally or knowingly violated the federal Securities Act of 1933, the federal Securities Exchange Act of 1934, the federal Investment Advisers Act of 1940, the federal Investment Company Act of 1940, the federal Commodity Exchange Act, the securities or commodities law of a state or a federal or state law under which a business involving investments, franchises, insurance, banking or finance is regulated; [2005, c. 65, Pt. A, §2 (NEW).]

G. Is insolvent, either because the person's liabilities exceed the person's assets or because the person can not meet the person's obligations as they mature. The administrator may not enter an order against an applicant or licensee under this paragraph without a finding of insolvency as to the applicant or licensee; [2005, c. 65, Pt. A, §2 (NEW).]

H. Refuses to allow or otherwise impedes the administrator from conducting an audit or inspection under section 16411, subsection 4 or refuses access to a licensee's office to conduct an audit or inspection under section 16411, subsection 4; [2005, c. 65, Pt. A, §2 (NEW).]

I. Has failed to reasonably supervise an agent, investment adviser representative or other individual if the agent, investment adviser representative or other individual was subject to the person's supervision and committed a violation of this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act or engaged in conduct that would be grounds for discipline under this subsection within the previous 10 years; [2005, c. 65, Pt. A, §2 (NEW).]

J. Is subject to an order entered by a court of competent jurisdiction or entered after notice and opportunity for hearing by a federal or state licensing agency denying, suspending, revoking or restricting the person's license to sell real estate, insurance or any investment other than securities, provided that the order resulted from allegations of misconduct. This paragraph also applies when the

denial, suspension, revocation or restriction of the license is pursuant to a consent agreement between the person and the licensing agency, whether or not the agency also issues an order; [2005, c. 65, Pt. A, §2 (NEW).]

K. After notice and opportunity for a hearing, has been found within the previous 10 years:

(1) By a court of competent jurisdiction to have intentionally and knowingly violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking or finance is regulated;

(2) To have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser representative or similar person; or

(3) To have been suspended or expelled from membership by or participation in a securities exchange or securities association operating under the securities laws of a foreign jurisdiction; [2005, c. 65, Pt. A, §2 (NEW).]

L. Is the subject of a cease and desist order issued by the Securities and Exchange Commission or issued under the securities, commodities, investment, franchise, banking, finance or insurance laws of a state; [2005, c. 65, Pt. A, §2 (NEW).]

M. Has engaged in unlawful, dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance or insurance business within the previous 10 years; or [2005, c. 65, Pt. A, §2 (NEW).]

N. Is not qualified on the basis of factors such as training, experience and knowledge of the securities business; except that, in the case of an application by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for licensing as an investment adviser representative, a denial order may not be based on this paragraph if the individual has successfully completed all examinations required by subsection 5. The administrator may require an applicant for licensing under section 16402 or 16404 who has not been registered or licensed in a state within the 2 years preceding the filing of an application in this State to successfully complete an examination. [2005, c. 65, Pt. A, §2 (NEW).]

[2007, c. 14, §8 (AMD) .]

5. **Examinations.** A rule adopted or order issued under this chapter may require that training or an examination, including an examination developed or approved by an organization of securities regulators, be successfully completed by a class of individuals or all individuals. An order issued under this chapter may waive, in whole or in part, training or an examination as to an individual or training or an examination as to a class of individuals if the administrator determines that the training or examination is not necessary or appropriate in the public interest and for the protection of investors.

[2005, c. 65, Pt. A, §2 (NEW) .]

6. **Summary process.** Notwithstanding Title 5, sections 10003 and 10004, if the public interest or the protection of investors so requires, the administrator may suspend or deny an application summarily; restrict, condition, limit or suspend a license; or censure, bar or impose a civil penalty on a licensee before final determination of an administrative proceeding. Upon the issuance of an order, the administrator shall promptly notify each person subject to the order that the order has been issued, the reasons for the action and that within 15 days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the administrator within 30 days after the date of service of the order, the order becomes final by operation of law. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.

[2005, c. 65, Pt. A, §2 (NEW) .]

7. **Procedural requirements.** An order may not be issued under this section, except under subsection 6, without:

A. Appropriate notice to the applicant or licensee; [2005, c. 65, Pt. A, §2 (NEW).]

B. Opportunity for hearing; and [2005, c. 65, Pt. A, §2 (NEW).]

C. Findings of fact and conclusions of law in a record in accordance with Title 5, chapter 375. [2005, c. 65, Pt. A, §2 (NEW).]

[2007, c. 14, §9 (AMD) .]

8. **Control person liability.** A person that controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the administrator under subsections 1 to 3 to the same extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is a ground for discipline under this section.

[2005, c. 65, Pt. A, §2 (NEW) .]

9. **Limit on investigation or proceeding.** The administrator may not institute a proceeding under subsection 1, 2 or 3 based solely on material facts actually known by the administrator unless an investigation or the proceeding is instituted within one year after the administrator actually acquires knowledge of the material facts.

[2005, c. 65, Pt. A, §2 (NEW) .]

10. **Appointment of presiding officer.** For purposes of a hearing conducted pursuant to this section, the administrator may appoint a qualified person to preside at the hearing and to make proposed findings of fact and conclusions of law. The responsibility for the entry of the final findings of fact and conclusions of law and for the issuance of any final order remains with the administrator.

[2007, c. 14, §10 (NEW) .]

SECTION HISTORY
2005, c. 65, §A2 (NEW). 2007, c. 14, §§5-10 (AMD). 2011, c. 37, §1 (AMD).

Subchapter 5: FRAUD AND LIABILITIES
HEADING: PL 2005, C. 65, PT. A, §2 (NEW)

§16501. GENERAL FRAUD

It is unlawful for a person, in connection with the offer, sale or purchase of a security, directly or indirectly: [2005, c. 65, Pt. A, §2 (NEW).]

1. **Device, scheme, artifice.** To employ a device, scheme or artifice to defraud;

[2005, c. 65, Pt. A, §2 (NEW) .]

2. **Untrue statement of or omission of material fact.** To make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

[2005, c. 65, Pt. A, §2 (NEW) .]

3. **Fraud, deceit.** To engage in an act, practice or course of business that operates or would operate as a fraud or deceit upon another person.

[2005, c. 65, Pt. A, §2 (NEW) .]

SECTION HISTORY
2005, c. 65, §A2 (NEW).

§16502. PROHIBITED CONDUCT IN PROVIDING INVESTMENT ADVICE

1. **Fraud in providing investment advice.** It is unlawful for a person that advises others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing or selling securities or that, for compensation and as part of a regular business, issues or promulgates analyses or reports relating to securities:

A. To employ a device, scheme or artifice to defraud another person; or [2005, c. 65, Pt. A, §2 (NEW).]

B. To engage in an act, practice or course of business that operates or would operate as a fraud or deceit upon another person. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

2. **Rules defining fraud.** A rule adopted under this chapter may define an act, practice or course of business of a person described in subsection 1 as fraudulent, deceptive or manipulative and prescribe means reasonably designed to prevent investment advisers and investment adviser representatives from engaging in acts, practices and courses of business defined as fraudulent, deceptive or manipulative.

[2005, c. 65, Pt. A, §2 (NEW) .]

3. **Rules specifying contents of advisory contract.** A rule adopted under this chapter may specify the contents of an investment advisory contract entered into, extended or renewed by an investment adviser.

[2005, c. 65, Pt. A, §2 (NEW) .]

4. **Rulemaking.** Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2005, c. 65, Pt. A, §2 (NEW) .]

SECTION HISTORY
2005, c. 65, §A2 (NEW).

§16503. EVIDENTIARY BURDEN

1. **Civil.** In a civil action or administrative proceeding under this chapter, a person claiming an exemption, exception, preemption or exclusion has the burden to prove the applicability of the exemption, exception, preemption or exclusion.

[2005, c. 65, Pt. A, §2 (NEW) .]

2. **Criminal.** In a criminal proceeding under this chapter, a person claiming an exemption, exception, preemption or exclusion has the burden to prove by a preponderance of the evidence any such affirmative defense.

[2005, c. 65, Pt. A, §2 (NEW) .]

SECTION HISTORY
2005, c. 65, §A2 (NEW).

§16504. FILING OF SALES AND ADVERTISING LITERATURE

1. **Filing requirement.** A rule adopted or order issued under this chapter may require the filing of a prospectus, a pamphlet, a circular, a form letter, an advertisement, sales literature, some other advertising record relating to a security or investment advice or a business plan addressed or intended for distribution to prospective investors, including clients or prospective clients of a person licensed or required to be licensed as an investment adviser under this chapter. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2005, c. 65, Pt. A, §2 (NEW) .]

2. **Excluded communications.** This section does not apply to sales and advertising literature specified in subsection 1 that relates to a federal covered security, a federal covered investment adviser or a security or transaction exempted by section 16201, 16202 or 16203 except as required pursuant to section 16201, subsection 7 and section 16202, subsections 15 and 24.

[2005, c. 65, Pt. A, §2 (NEW) .]

SECTION HISTORY
2005, c. 65, §A2 (NEW).

§16505. MISLEADING FILINGS

It is unlawful for a person to make or cause to be made in a record that is used in an action or proceeding or filed under this chapter a statement that, at the time and in the light of the circumstances under which it is made, is false or misleading in a material respect or, in connection with the statement, to omit to state a material fact necessary to make the statement made, in the light of the circumstances under which it was made, not false or misleading. [2005, c. 65, Pt. A, §2 (NEW).]

SECTION HISTORY
2005, c. 65, §A2 (NEW).

§16506. MISREPRESENTATIONS CONCERNING LICENSING, REGISTRATION OR EXEMPTION

The filing of an application for licensing, registration, a registration statement, a notice filing under this chapter, the licensing of a person, the notice filing by a person or the registration of a security under this chapter does not constitute a finding by the administrator that a record filed under this chapter is true, complete and not misleading. The filing, licensing or registration or the availability of an exemption, exception, preemption or exclusion for a security or a transaction does not mean that the administrator has passed upon the merits or qualifications of, or recommended or given approval to, a person, security

or transaction. It is unlawful to make or cause to be made to a purchaser, customer, client or prospective customer or client a representation inconsistent with this section. [2005, c. 65, Pt. A, §2 (NEW).]

SECTION HISTORY
2005, c. 65, §A2 (NEW).

§16507. QUALIFIED IMMUNITY

A broker-dealer, agent, investment adviser, federal covered investment adviser or investment adviser representative is not liable to another broker-dealer, agent, investment adviser, federal covered investment adviser or investment adviser representative for defamation relating to a statement that is contained in a record required by the administrator or designee of the administrator, the Securities and Exchange Commission or a self-regulatory organization, unless the person knew, or should have known at the time that the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity. [2005, c. 65, Pt. A, §2 (NEW).]

SECTION HISTORY
2005, c. 65, §A2 (NEW).

§16508. CRIMINAL PENALTIES

1. **Criminal penalties.** A person that intentionally or knowingly violates this chapter, or a rule adopted or order issued under this chapter, except section 16504 or the notice filing requirements of section 16302 or 16405, or that intentionally or knowingly violates section 16505 knowing the statement made to be false or misleading in a material respect, upon conviction, commits a Class C crime. In any prosecution under this section, the State need not prove that the defendant knew that any instrument involved was a security, that any instrument was required to be registered under section 16301 or that any license was required under sections 16401 to 16404. An individual convicted of violating a rule or order under this chapter may be fined, but may not be imprisoned, if the individual did not have knowledge of the rule or order.

[2013, c. 39, §2 (AMD) .]

2. **Referral to Attorney General.** The administrator may refer such evidence as is available concerning violations of this chapter or any rule or order issued under this chapter to the Attorney General, who may, with or without such a reference from the administrator, institute the appropriate criminal proceedings under this chapter. The Attorney General may request assistance from the administrator or employees of the administrator.

[2005, c. 65, Pt. A, §2 (NEW) .]

3. **No limitation on other criminal enforcement.** This chapter does not limit the power of this State to punish a person for conduct that constitutes a crime under other laws of this State.

[2005, c. 65, Pt. A, §2 (NEW) .]

4. **Venue.** When a person pursuant to one scheme or course of conduct, whether upon the same person or several persons, engages in fraudulent or other prohibited practices, engages in unlawful transactions of business or other unlawful conduct or engages in unlawful offers to sell or purchase or unlawful sales or purchases under this chapter, the State may opt for a single Class C count, and, in that circumstance, prosecution may be brought in any venue in which one or more of the unlawful acts were committed.

[2005, c. 65, Pt. A, §2 (NEW) .]

SECTION HISTORY

2005, c. 65, §A2 (NEW). 2013, c. 39, §2 (AMD).

§16509. CIVIL LIABILITY

1. **Securities Litigation Uniform Standards Act.** Enforcement of civil liability under this section is subject to the federal Securities Litigation Uniform Standards Act of 1998.

[2005, c. 65, Pt. A, §2 (NEW) .]

2. **Liability of seller to purchaser.** A person is liable to the purchaser if the person sells a security in violation of section 16301; section 16303, subsection 6; section 16304, subsection 5; or section 16305, subsection 6 or by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the purchaser not knowing of the untruth or omission and the seller not sustaining the burden of proof that the seller did not know and, in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by the following.

A. The purchaser may maintain an action to recover the consideration paid for the security, less the amount of any income received on the security, and the interest at the legal rate of interest from the date of the purchase, costs and reasonable attorney's fees determined by the court, upon the tender of the security, or for actual damages as provided in paragraph C. [2005, c. 65, Pt. A, §2 (NEW).]

B. The tender referred to in paragraph A may be made any time before entry of judgment. Tender requires only notice in a record of ownership of the security and willingness to exchange the security for the amount specified. A purchaser that no longer owns the security may recover actual damages as provided in paragraph C. [2005, c. 65, Pt. A, §2 (NEW).]

C. Actual damages in an action arising under this subsection are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it and the interest at the legal rate of interest from the date of the purchase, costs and reasonable attorney's fees determined by the court. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

3. **Liability of purchaser to seller.** A person is liable to the seller if the person buys a security by means of an untrue statement of a material fact or omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the seller not knowing of the untruth or omission and the purchaser not sustaining the burden of proof that the purchaser did not know and, in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by the following.

A. The seller may maintain an action to recover the security and any income received on the security, costs and reasonable attorney's fees determined by the court, upon the tender of the purchase price, or for actual damages as provided in paragraph C. [2005, c. 65, Pt. A, §2 (NEW).]

B. The tender referred to in paragraph A may be made any time before entry of judgment. Tender requires only notice in a record of the present ability to pay the amount tendered and willingness to take delivery of the security for the amount specified. If the purchaser no longer owns the security, the seller may recover actual damages as provided in paragraph C. [2005, c. 65, Pt. A, §2 (NEW).]

C. Actual damages in an action arising under this subsection are the difference between the price at which the security was sold and the value the security would have had at the time of the sale in the absence of the purchaser's conduct causing liability and the interest at the legal rate of interest from the date of the sale of the security, costs and reasonable attorney's fees determined by the court. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

4. **Liability of unlicensed broker-dealer and agent.** A person acting as a broker-dealer or agent that sells or buys a security in violation of section 16401, subsection 1; section 16402, subsection 1; or section 16506 is liable to the customer. The customer, if a purchaser, may maintain an action for a remedy as specified in subsection 2, paragraphs A to C or, if a seller, for a remedy as specified in subsection 3, paragraphs A to C.

[2005, c. 65, Pt. A, §2 (NEW) .]

5. **Liability of unlicensed investment adviser and investment adviser representative.** A person acting as an investment adviser or investment adviser representative that provides investment advice for compensation in violation of section 16403, subsection 1; section 16404, subsection 1; or section 16506 is liable to the client. The client may maintain an action to recover the consideration paid for the advice, interest at the legal rate of interest from the date of payment, costs and reasonable attorney's fees determined by the court.

[2005, c. 65, Pt. A, §2 (NEW) .]

6. **Liability for investment advice.** A person that receives directly or indirectly any consideration for providing investment advice to another person and that employs a device, scheme or artifice to defraud the other person or engages in an act, practice or course of business that operates or would operate as a fraud or deceit on the other person is liable to the other person. An action under this subsection is governed by the following.

A. The person defrauded may maintain an action to recover the consideration paid for the advice and the amount of any actual damages caused by the fraudulent conduct, interest at the legal rate of interest from the date of the fraudulent conduct, costs and reasonable attorney's fees determined by the court, less the amount of any income received as a result of the fraudulent conduct. [2005, c. 65, Pt. A, §2 (NEW).]

B. This subsection does not apply to a broker-dealer or its agents if the investment advice provided is solely incidental to transacting business as a broker-dealer and no special compensation is received for the investment advice. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

7. **Joint and several liability.** The following persons are liable jointly and severally with and to the same extent as persons liable under subsections 2 to 6:

A. A person that directly or indirectly controls a person liable under subsections 2 to 6, unless the controlling person sustains the burden of proof that the person did not know and, in the exercise of reasonable care, could not have known of the existence of conduct by reason of which the liability is alleged to exist; [2005, c. 65, Pt. A, §2 (NEW).]

B. An individual who is a managing partner, executive officer or director of a person liable under subsections 2 to 6, including an individual having a similar status or performing similar functions, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care, could not have known of the existence of conduct by reason of which the liability is alleged to exist; [2005, c. 65, Pt. A, §2 (NEW).]

C. An individual who is an employee of or associated with a person liable under subsections 2 to 6 and who materially aids the conduct giving rise to the liability, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care, could not have known of the existence of conduct by reason of which the liability is alleged to exist; and [2005, c. 65, Pt. A, §2 (NEW).]

D. A person that is a broker-dealer, agent, investment adviser or investment adviser representative that materially aids the conduct giving rise to the liability under subsections 2 to 6, unless the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care, could not have known of the existence of conduct by reason of which the liability is alleged to exist. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

8. **Right of contribution.** A person liable under this section has a right of contribution as in cases of contract against any other person liable under this section for the same conduct.

[2005, c. 65, Pt. A, §2 (NEW) .]

9. **Survival of cause of action.** A cause of action under this section survives the death of an individual who might have been a plaintiff or defendant.

[2005, c. 65, Pt. A, §2 (NEW) .]

10. **Statute of limitations.** A person may not obtain relief:

A. Under subsection 2 for violation of section 16301 or under subsection 4 or 5, unless the action is instituted within 2 years after the violation occurred; or [2005, c. 65, Pt. A, §2 (NEW).]

B. Under subsection 2, other than for violation of section 16301, or under subsection 3 or 6, unless the action is instituted within the earlier of 2 years after discovery of the facts constituting the violation or 5 years after the violation. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

11. **No enforcement of violative contract.** A person that has made, or has engaged in the performance of, a contract in violation of this chapter or a rule adopted or order issued under this chapter, or that has acquired a purported right under the contract with knowledge of conduct by reason of which its making or performance was in violation of this chapter, may not base an action on the contract.

[2005, c. 65, Pt. A, §2 (NEW) .]

12. **No contractual waiver.** A condition, stipulation or provision binding a person purchasing or selling a security or receiving investment advice to waive compliance with this chapter or a rule adopted or order issued under this chapter is void.

[2005, c. 65, Pt. A, §2 (NEW) .]

13. **Survival of other rights or remedies.** The rights and remedies provided by this chapter are in addition to any other rights or remedies that may exist, but this chapter does not create a cause of action not specified in this section or section 16411, subsection 5.

[2005, c. 65, Pt. A, §2 (NEW) .]

SECTION HISTORY
2005, c. 65, §A2 (NEW).

§16510. RESCISSION OFFERS

1. **Requirements.** A purchaser, seller or recipient of investment advice may not maintain an action under section 16509 if:

A. The purchaser, seller or recipient of investment advice receives in a record, before the action is instituted:

(1) An offer stating the respect in which liability under section 16509 may have arisen and fairly advising the purchaser, seller or recipient of investment advice of that person's rights in connection with the offer and any financial or other information necessary to correct all material misrepresentations or omissions in the information that was required by this chapter to be furnished to that person at the time of the purchase, sale or investment advice;

(2) If the basis for relief under this section may have been a violation of section 16509, subsection 2, an offer to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid and interest at the legal rate of interest from the date of the purchase, less the amount of any income received on the security, or, if the purchaser no longer owns the security, an offer to pay the purchaser upon acceptance of the offer damages in an amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it and interest at the legal rate of interest from the date of the purchase in cash equal to the damages computed in the manner provided in this subsection;

(3) If the basis for relief under this section may have been a violation of section 16509, subsection 3, an offer to tender the security, on payment by the seller of an amount equal to the purchase price paid, less income received on the security by the purchaser and interest at the legal rate of interest from the date of the sale, or, if the purchaser no longer owns the security, an offer to pay the seller upon acceptance of the offer, in cash, damages in the amount of the difference between the price at which the security was purchased and the value the security would have had at the time of the purchase in the absence of the purchaser's conduct that may have caused liability and interest at the legal rate of interest from the date of the sale;

(4) If the basis for relief under this section may have been a violation of section 16509, subsection 4, an offer to pay as specified in subparagraph (2) if the customer is a purchaser or an offer to tender or to pay as specified in subparagraph (3) if the customer is a seller;

(5) If the basis for relief under this section may have been a violation of section 16509, subsection 5, an offer to reimburse in cash the consideration paid for the advice and interest at the legal rate of interest from the date of payment; or

(6) If the basis for relief under this section may have been a violation of section 16509, subsection 6, an offer to reimburse in cash the consideration paid for the advice, the amount of any actual damages that may have been caused by the conduct and interest at the legal rate of interest from the date of the violation causing the loss; [2005, c. 65, Pt. A, §2 (NEW).]

B. The offer under paragraph A states that it must be accepted by the purchaser, seller or recipient of investment advice within 30 days after the date of its receipt by the purchaser, seller or recipient of investment advice or any shorter period, of not less than 3 days, that the administrator, by order, specifies; [2005, c. 65, Pt. A, §2 (NEW).]

C. The offeror has the present ability to pay the amount offered or to tender the security under paragraph A; [2005, c. 65, Pt. A, §2 (NEW).]

D. The offer under paragraph A is delivered to the purchaser, seller or recipient of investment advice or sent in a manner that ensures receipt by the purchaser, seller or recipient of investment advice; and [2005, c. 65, Pt. A, §2 (NEW).]

E. The purchaser, seller or recipient of investment advice that accepts the offer under paragraph A in a record within the period specified under paragraph B is paid in accordance with the terms of the offer. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

2. **Form of offer.** The administrator, by rule or order, may prescribe the form in which the information specified in subsection 1 must be contained in any offer made under subsection 1. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2005, c. 65, Pt. A, §2 (NEW) .]

3. **Statute of limitation tolled.** If an offer is not performed in accordance with its terms, suit by the offeree under section 16509 is permitted without regard to this section, and the statute of limitations tolls from the time of receipt of the offer until 120 days after the rescission or settlement offer was to have been performed.

[2005, c. 65, Pt. A, §2 (NEW) .]

SECTION HISTORY
2005, c. 65, §A2 (NEW).

§16511. RIGHT TO RESCISSION APPLICABLE TO SALES OF VIATICAL OR LIFE SETTLEMENT CONTRACTS

1. **Right to rescind transaction.** In addition to any other rights provided for under this chapter or otherwise, an investor, other than an institutional investor, who purchases a viatical or life settlement contract may rescind the investment by giving written notice of rescission to the entity designated for such notice in the disclosure documents, by ordinary mail postage prepaid, within 30 business days following the later of:

A. The day on which the investor received the final disclosure document pertaining to the transaction as required under this chapter and the rules or orders under this chapter; and [2005, c. 65, Pt. A, §2 (NEW).]

B. The day on which the investor paid the required consideration for the purchase of the viatical or life settlement contract. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

2. **Form of notice.** The notice is sufficient if addressed to the entity designated for such notice at the address given in the disclosure statement pertaining to the transaction. Notice of rescission is effective upon deposit in the United States mail. The notice of rescission need not take a particular form and is sufficient if it expresses the intention of the purchaser to rescind the transaction.

[2005, c. 65, Pt. A, §2 (NEW) .]

SECTION HISTORY
2005, c. 65, §A2 (NEW).

Subchapter 6: ADMINISTRATION AND JUDICIAL REVIEW HEADING: PL 2005, C. 65, PT. A, §2 (NEW)

§16601. ADMINISTRATION

1. **Office of Securities; administrator.** There is created within the Department of Professional and Financial Regulation the Office of Securities. The Office of Securities is directed by the Securities Administrator, referred to in this chapter as the "administrator," who is responsible for the administration and enforcement of this chapter, the Maine Commodity Code and chapter 69-B.

A. The administrator is appointed by the Commissioner of Professional and Financial Regulation. The administrator is appointed for a term that is coterminous with the term of the Governor or until a successor is appointed and qualified. Any vacancy occurring must be filled by appointment for the unexpired portion of the term. The administrator may be removed from office for cause by the commissioner, and Title 5, section 931, subsection 2 does not apply. A person appointed as administrator must have knowledge of, or experience in, the theory and practice of securities. [2005, c. 65, Pt. A, §2 (NEW).]

B. With the approval of the Commissioner of Professional and Financial Regulation, the administrator shall organize the Office of Securities in such a manner as the administrator considers necessary to carry out the administrator's responsibilities. [2005, c. 65, Pt. A, §2 (NEW).]

C. The administrator may employ personnel as the business of the Office of Securities may require, subject to the Commissioner of Professional and Financial Regulation's approval and in accordance with the Civil Service Law. The qualifications of the personnel must reflect the needs and responsibilities of the Office of Securities' regulatory functions. The administrator may authorize senior personnel of the Office of Securities to carry out the administrator's duties and authority. The administrator may employ or engage such expert, professional or other assistance as may be necessary to assist the Office of Securities in carrying out its functions. In addition to salaries or wages, all employees of the Office of Securities must receive their actual expenses incurred in the performance of their official duties. [2005, c. 65, Pt. A, §2 (NEW).]

D. At the expense of the Office of Securities, the administrator may train the Office of Securities' employees, or have them trained, in a manner the administrator determines desirable, to carry out the purposes of the Office of Securities. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

2. **Unlawful use of records or information.** It is unlawful for the administrator or an employee or designee of the administrator to use for personal benefit or the benefit of others records or other information obtained by or filed with the administrator that is not public under section 16607, subsection 2. This chapter does not authorize the administrator or an officer, employee or designee of the administrator to disclose the record or information, except in accordance with section 16602, section 16607, subsection 3 or section 16608.

[2005, c. 65, Pt. A, §2 (NEW) .]

3. **No privilege or exemption created or diminished.** This chapter does not create or diminish a privilege or exemption that exists at common law or by statute or rule or otherwise.

[2005, c. 65, Pt. A, §2 (NEW) .]

4. **Investor education.** The administrator may develop and implement investor education initiatives to inform the public about investing in securities, with particular emphasis on the prevention and detection of securities fraud. In developing and implementing these initiatives, the administrator may collaborate with public and nonprofit organizations with an interest in investor education. The administrator may accept a grant or donation from a person that is not affiliated with the securities industry or from a nonprofit

organization, regardless of whether the organization is affiliated with the securities industry, to develop and implement investor education initiatives. This subsection does not authorize the administrator to require participation or monetary contributions of a registrant in an investor education program.

[2005, c. 65, Pt. A, §2 (NEW) .]

5. **Waiver of fee.** The administrator may, by order, waive the filing fee required to register a security, to perfect a notice filing for a federal covered security or to secure an exemption from registration upon a written finding that the fee would be unreasonably high in light of the maximum potential proceeds from the sale of the security in the State or that the imposition of the fee would otherwise be unreasonable.

[2005, c. 65, Pt. A, §2 (NEW) .]

6. **Nonlapsing operating fund.** There is established an operating fund to be used to carry out the purposes of this chapter and any other statutory duties of the administrator. The operating fund consists of all annual renewal license fees for agents and investment adviser representatives received pursuant to this chapter. Any balance in the operating fund does not lapse, but must be carried forward to be used for the same purposes.

[2005, c. 65, Pt. A, §2 (NEW) .]

7. **Securities Investor Education and Training Fund.** The Securities Investor Education and Training Fund, referred to in this subsection as "the fund," is established to provide funds for the purposes specified in subsection 4. The fund consists of all grants or donations accepted by the administrator pursuant to subsection 4 and all payments received by the administrator for investor education and training that have been designated in a consent order or consent agreement resulting from a multistate investigation or a joint investigation with the federal Securities and Exchange Commission or a court order or court judgment to be credited to the fund. Any balance in the fund does not lapse but must be carried forward to be used for the same purposes.

[2005, c. 485, §1 (NEW) .]

SECTION HISTORY
2005, c. 65, §A2 (NEW). 2005, c. 485, §1 (AMD).

§16602. INVESTIGATIONS AND SUBPOENAS

1. **Authority to investigate.** The administrator may:

A. Conduct public or private investigations within or outside of this State that the administrator considers necessary or appropriate to determine whether a person has violated, is violating or is about to violate this chapter or a rule adopted or order issued under this chapter or to aid in the enforcement of this chapter or in the adoption of rules and forms under this chapter; [2005, c. 65, Pt. A, §2 (NEW).]

B. Require or permit a person to testify, file a statement or produce a record, under oath or otherwise as the administrator determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted; and [2005, c. 65, Pt. A, §2 (NEW).]

C. Publish a record concerning an action, proceeding or investigation under, or a violation of, this chapter or a rule adopted or order issued under this chapter if the administrator determines it is necessary or appropriate in the public interest and for the protection of investors. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

2. **Administrator powers to investigate.** For the purpose of an investigation under this chapter, the administrator or the administrator's designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements and require the production of any records that the administrator considers relevant or material to the investigation. It is unlawful to fail to provide any statement or record if requested.

[2005, c. 65, Pt. A, §2 (NEW) .]

3. **Procedure and remedies for noncompliance.** If a person does not appear or refuses to testify, file a statement or produce records or otherwise does not obey a subpoena as required by the administrator under this chapter, the administrator may request that the Attorney General apply to either the Superior Court located in Kennebec County or the Superior Court where service may be obtained on the person refusing to testify or produce or a court of another state to enforce compliance. The court may:

A. Hold the person in contempt; [2005, c. 65, Pt. A, §2 (NEW).]

B. Order the person to appear before the administrator; [2005, c. 65, Pt. A, §2 (NEW).]

C. Order the person to testify about the matter under investigation or in question; [2005, c. 65, Pt. A, §2 (NEW).]

D. Order the production of records; [2005, c. 65, Pt. A, §2 (NEW).]

E. Grant injunctive relief, including restricting or prohibiting the offer or sale of securities or the providing of investment advice; [2005, c. 65, Pt. A, §2 (NEW).]

F. Impose a civil fine not to exceed $10,000 per violation; and [2005, c. 65, Pt. A, §2 (NEW).]

G. Grant any other necessary or appropriate relief. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

4. **Application for relief.** This section does not preclude a person from applying to the Superior Court located in Kennebec County or a court of another state for relief from a request to appear, testify, file a statement, produce records or obey a subpoena.

[2005, c. 65, Pt. A, §2 (NEW) .]

5. **Assistance to securities regulator of another jurisdiction.** At the request of the securities regulator of another state or a foreign jurisdiction, the administrator may provide assistance if the requesting regulator states that it is conducting an investigation to determine whether a person has violated, is violating or is about to violate a law or rule of the other state or foreign jurisdiction relating to securities matters that the requesting regulator administers or enforces. The administrator may provide the assistance by using the authority to investigate and the powers conferred by this section as the administrator determines is necessary or appropriate. The assistance may be provided without regard to whether the conduct described in the request would also constitute a violation of this chapter or other law of this State if occurring in this State. In deciding whether to provide the assistance, the administrator may consider whether the requesting regulator is permitted and has agreed to provide assistance reciprocally within its state or foreign jurisdiction to the administrator on securities matters when requested, whether compliance with the request would violate or prejudice the public policy of this State and the availability of resources and employees of the administrator to carry out the request for assistance.

[2005, c. 65, Pt. A, §2 (NEW) .]

SECTION HISTORY
2005, c. 65, §A2 (NEW).

§16603. CIVIL ENFORCEMENT

1. **Civil action instituted by administrator.** If the administrator believes that a person has engaged, is engaging or is about to engage in an act, practice or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has engaged, is engaging or is about to engage in an act, practice or course of business that materially aids a violation of this chapter or a rule adopted or order issued under this chapter, the administrator may request that the Attorney General bring an action in the Superior Court of the county in which the person resides or has the principal place of business or in the Superior Court of Kennebec County to enjoin the act, practice or course of business and to enforce compliance with this chapter or a rule adopted or order issued under this chapter.

[2007, c. 14, §11 (AMD) .]

2. **Relief available.** In an action under this section and on a proper showing, the court may:

A. Issue a permanent or temporary injunction, restraining order or declaratory judgment; [2005, c. 65, Pt. A, §2 (NEW).]

B. Order other appropriate or ancillary relief, which may include:

(1) An asset freeze, accounting, writ of attachment, writ of general or specific execution and appointment of a receiver or conservator, which may be the administrator, for the defendant or the defendant's assets;

(2) Ordering the administrator to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents and profits, to collect debts and to acquire and dispose of property;

(3) Imposing a civil fine not to exceed $10,000 per violation or an order of rescission, restitution or disgorgement directed to a person that has engaged in an act, practice or course of business constituting a violation of this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act;

(4) Ordering the payment of prejudgment and postjudgment interest; and

(5) Doubling the amount of a civil fine, not to exceed a maximum of $20,000 per violation, and doubling the amount of a monetary remedy, other than a civil fine, without limitation for a violation involving an investor 65 years of age or older; or [2011, c. 37, §2 (AMD).]

C. Order such other relief as the court considers appropriate. [2005, c. 65, Pt. A, §2 (NEW).]

[2011, c. 37, §2 (AMD) .]

3. **No bond required.** The administrator is not required to post a bond in an action or proceeding under this chapter.

[2005, c. 65, Pt. A, §2 (NEW) .]

4. **Securities agency of another state.** Upon a showing by the administrator or securities agency of another state that a person has violated any provision of the securities act of that state or any rule or order of the administrator or securities agency of that state, the Superior Court may grant appropriate legal and equitable remedies.

[2005, c. 65, Pt. A, §2 (NEW) .]

SECTION HISTORY
2005, c. 65, §A2 (NEW). 2007, c. 14, §11 (AMD). 2011, c. 37, §2 (AMD).

§16604. ADMINISTRATIVE ENFORCEMENT

1. **Issuance of order or notice.** If the administrator determines that a person has engaged, is engaging or is about to engage in an act, practice or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has materially aided, is materially aiding or is about to materially aid an act, practice or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter, the administrator may:

A. Issue an order directing the person to cease and desist from engaging in the act, practice or course of business or to take other action necessary or appropriate to comply with this chapter; [2005, c. 65, Pt. A, §2 (NEW).]

B. Issue an order denying, suspending, revoking or conditioning the exemptions for a broker-dealer under section 16401, subsection 2, paragraph A, subparagraph (4) or (6) or an investment adviser under section 16403, subsection 2, paragraph A, subparagraph (3); or [2005, c. 65, Pt. A, §2 (NEW).]

C. Issue an order under section 16204. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

2. **Summary process.** An order under subsection 1 is effective on the date of issuance. Upon issuance of the order, the administrator shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement of any censure, bar, civil fine or costs of investigation the administrator will seek, a statement of the reasons for the order and notice that, within 15 days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the administrator within 30 days after the date of service of the order, the order, including the imposition of a censure, bar or civil fine or requirement for payment of the costs of investigation sought in a statement in the order, becomes final as to that person by operation of law. A summary order issued against any person becomes a final order 30 days after the administrator mails notice to the interested parties of the right to request a hearing if they fail to request a hearing or on the date of the hearing if the person requesting the hearing fails to appear. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

[2007, c. 14, §12 (AMD) .]

3. **Procedure for final order.** If a hearing is requested or ordered pursuant to subsection 2, a hearing must be held pursuant to the Maine Administrative Procedure Act. A final order may not be issued unless the administrator makes findings of fact and conclusions of law in a record in accordance with the Maine Administrative Procedure Act. The final order may make final, vacate or modify the order issued under subsection 1.

[2005, c. 65, Pt. A, §2 (NEW) .]

4. **Civil fine; final orders and remedies.** In a final order under subsection 3, the administrator may: order remedies described in subsection 1; censure that person; bar that person from association with any issuer, broker-dealer or investment adviser in this State; order restitution; or impose a civil fine not to exceed $5,000 per violation. For a violation involving an investor 65 years of age or older, the amount of the civil fine may be doubled to an amount not to exceed a maximum of $10,000 per violation.

[2013, c. 39, §3 (AMD) .]

5. **Costs.** In a final order, the administrator may charge the actual cost of an investigation or proceeding for a violation of this chapter or a rule adopted or order issued under this chapter.

[2005, c. 65, Pt. A, §2 (NEW) .]

6. **Filing of certified final order with court; effect of filing.** If a petition for judicial review of a final order is not filed in accordance with section 16609, the administrator may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced or satisfied in the same manner as a judgment of the court.

[2005, c. 65, Pt. A, §2 (NEW) .]

7. **Enforcement by court; further civil fine.** If a person does not comply with an order under this section, the administrator may request that the Attorney General petition a court of competent jurisdiction to enforce the order. The court may not require the administrator to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may adjudge the person in contempt of the order. The court may impose a further civil fine against the person for contempt in an amount not to exceed $10,000 per violation and may grant any other relief the court determines is just and proper in the circumstances.

[2005, c. 65, Pt. A, §2 (NEW) .]

8. **Appointment of presiding officer.** For purposes of any hearing conducted pursuant to this section, the administrator may appoint a qualified person to preside at the hearing and to make proposed findings of fact and conclusions of law. The responsibility for the entry of the final findings of fact and conclusions of law and for the issuance of any final order remain with the administrator.

[2005, c. 65, Pt. A, §2 (NEW) .]

SECTION HISTORY
2005, c. 65, §A2 (NEW). 2007, c. 14, §12 (AMD). 2011, c. 37, §3 (AMD). 2013, c. 39, §3 (AMD).

§16605. RULES, FORMS, ORDERS, INTERPRETATIVE OPINIONS AND HEARINGS

1. **Issuance and adoption of forms, orders and rules.** In addition to specific authority granted elsewhere in this chapter, the administrator may:

A. Issue forms and orders and, after notice and comment, adopt and amend rules necessary or appropriate to carry out this chapter and may repeal rules, including rules and forms governing registration statements, applications, notice filings, reports and other records; [2005, c. 65, Pt. A, §2 (NEW).]

B. By rule, define terms, whether or not used in this chapter, but those definitions may not be inconsistent with this chapter; and [2005, c. 65, Pt. A, §2 (NEW).]

C. By rule, classify securities, persons and transactions and adopt different requirements for different classes. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

2. **Findings and cooperation.** Under this chapter, a rule or form may not be adopted or amended, or an order issued or amended, unless the administrator finds that the rule, form, order or amendment is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes intended by this chapter. In adopting, amending and repealing rules and forms, section 16608 applies in

order to achieve uniformity among the states and coordination with federal laws in the form and content of registration statements, applications, reports and other records, including the adoption of uniform rules, forms and procedures.

[2005, c. 65, Pt. A, §2 (NEW) .]

3. **Financial statements.** The administrator may require that a financial statement filed under this chapter be prepared in accordance with generally accepted accounting principles in the United States and comply with other requirements specified by rule adopted or order issued under this chapter. A rule adopted or order issued under this chapter may establish:

A. The form and content of financial statements required under this chapter; [2005, c. 65, Pt. A, §2 (NEW).]

B. Whether unconsolidated financial statements must be filed; and [2005, c. 65, Pt. A, §2 (NEW).]

C. Whether required financial statements must be audited by an independent certified public accountant. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

4. **Interpretative opinions.** The administrator may provide interpretative opinions or issue determinations that the administrator will not institute a proceeding or an action under this chapter against a specified person for engaging in a specified act, practice or course of business if the determination is consistent with this chapter. A rule adopted or order issued under this chapter may establish a reasonable charge for interpretative opinions or determinations whether the administrator will institute an action or a proceeding under this chapter.

[2005, c. 65, Pt. A, §2 (NEW) .]

5. **Declaratory rulings.** The administrator, in the administrator's discretion, may conduct a hearing and issue a declaratory ruling under Title 5, section 9001, subsection 3 as to the applicability of this chapter, any provision of this chapter or any rule or order of the administrator to any person or transaction or as to the meaning of any term used in this chapter or any rule or order of the administrator.

[2005, c. 65, Pt. A, §2 (NEW) .]

6. **Conformity with rule, form or order.** No provision of this chapter imposing any liability applies to any act done or omitted in good faith in conformity with a rule, order or form adopted by the administrator, notwithstanding that the rule, order or form may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

[2005, c. 65, Pt. A, §2 (NEW) .]

7. **Presumption for public hearings.** A hearing in an administrative proceeding under this chapter must be conducted in public unless the administrator for good cause consistent with this chapter determines that the hearing will not be so conducted.

[2005, c. 65, Pt. A, §2 (NEW) .]

8. **Rulemaking.** Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2005, c. 65, Pt. A, §2 (NEW) .]

SECTION HISTORY

2005, c. 65, §A2 (NEW).

§16606. ADMINISTRATIVE FILES AND OPINIONS

1. **Public register of filings.** Subject to state record-keeping requirements, the administrator shall maintain, or designate a person to maintain, records or a register of: applications for registration of securities; registration statements; notice filings; applications for registration of broker-dealers, agents, investment advisers and investment adviser representatives; notice filings by federal covered investment advisers that are or have been effective under this chapter or the predecessor act; notices of claims of exemption from registration or notice filing requirements contained in a record; orders issued under this chapter or the predecessor act; and interpretative opinions or no action determinations issued under this chapter. Records may be maintained in computer or microform format or any other form of data storage, as long as the records are readily accessible.

[2005, c. 65, Pt. A, §2 (NEW) .]

2. **Public availability.** The administrator shall make all rules, forms, interpretative opinions, advisory rulings, consent agreements and orders available to the public.

[2005, c. 65, Pt. A, §2 (NEW) .]

3. **Copies of public records.** The administrator shall furnish a copy of a record that is a public record or a certification that the public record does not exist to a person that so requests. A rule adopted or order issued under this chapter may establish a reasonable charge for furnishing the record, not to exceed $.50 per page; for providing a licensee register in an electronically readable format, not to exceed $20 per copy; or for certification, not to exceed $10 per certified record. A copy of the record certified or a certificate by the administrator of a record's nonexistence is prima facie evidence of a record or its nonexistence. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2007, c. 14, §13 (AMD) .]

SECTION HISTORY
2005, c. 65, §A2 (NEW). 2007, c. 14, §13 (AMD).

§16607. PUBLIC RECORDS; CONFIDENTIALITY

1. **Presumption of public records.** Except as otherwise provided in subsection 2, records obtained by the administrator or filed under this chapter, including a record contained in or filed with a registration statement, application, notice filing or report, are public records and are available for public examination in accordance with Title 1, chapter 13, subchapter 1.

[2005, c. 65, Pt. A, §2 (NEW) .]

2. **Nonpublic records.** The following records are not public records and are not available for public examination under subsection 1:

A. A record obtained by the administrator in connection with an audit or inspection under section 16411, subsection 4 or an investigation under section 16602; [2005, c. 65, Pt. A, §2 (NEW).]

B. A part of a record filed in connection with a registration statement under section 16301 and sections 16303 to 16305 or a record under section 16411, subsection 4 that contains trade secrets or confidential information if the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law; [2005, c. 65, Pt. A, §2 (NEW).]

C. A record that is not required to be provided to the administrator or filed under this chapter and is provided to the administrator only on the condition that the record will not be subject to public examination or disclosure; [2005, c. 65, Pt. A, §2 (NEW).]

D. A record received from a person specified in section 16608, subsection 1 that has been designated as confidential by the agency furnishing the record; [2005, c. 65, Pt. A, §2 (NEW).]

E. Any social security number, residential address unless used as a business address and residential telephone number unless used as a business telephone number contained in a record that is filed; [2005, c. 65, Pt. A, §2 (NEW).]

F. A record obtained by the administrator through a designee of the administrator that, pursuant to a routine technical rule, as defined in Title 5, chapter 375, subchapter 2-A, or an order under this chapter, has been:

(1) Expunged from the administrator's records by the designee; or

(2) Determined to be nonpublic or nondisclosable by that designee if the administrator finds the determination to be in the public interest and for the protection of investors; [2005, c. 65, Pt. A, §2 (NEW).]

G. Records to the extent that they relate solely to the administrator's internal personnel rules and practices, including, but not limited to, protocols, guidelines, manuals and memoranda of procedure for employees of the Office of Securities; [2005, c. 65, Pt. A, §2 (NEW).]

H. Interagency or intra-agency memoranda or letters, including generally records that reflect discussions between or consideration by the administrator and employees of the Office of Securities of any action taken or proposed to be taken by the administrator or employees of the Office of Securities, including, but not limited to, reports, summaries, analyses, conclusions or other work product of the administrator or employees of the Office of Securities, except those that by law would routinely be discoverable in litigation; and [2005, c. 65, Pt. A, §2 (NEW).]

I. Records to the extent that disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

3. **Administrator discretion to disclose.** If disclosure is for the purpose of a civil, administrative or criminal investigation, action or proceeding or to a person specified in section 16608, subsection 1, the administrator may disclose a record obtained in connection with an audit or inspection under section 16411, subsection 4 or a record obtained in connection with an investigation under section 16602. Prior to disclosure to a person specified in section 16608, subsection 1, the administrator may require the requesting agency to certify that under applicable law reasonable protections exist to preserve the integrity, confidentiality and security of the information comparable to the protections existing under the laws of this State.

[2005, c. 65, Pt. A, §2 (NEW) .]

4. **Public disclosure for enforcement purposes.** The administrator may disclose to the public any information obtained in connection with an investigation that would otherwise be nonpublic information, but only if the administrator determines that disclosure is necessary for the protection of investors or the public.

[2005, c. 65, Pt. A, §2 (NEW) .]

SECTION HISTORY
2005, c. 65, §A2 (NEW).

§16608. UNIFORMITY AND COOPERATION WITH OTHER AGENCIES

1. **Objective of uniformity and cooperation.** The administrator may, in the administrator's discretion, cooperate, coordinate, consult and, subject to section 16607, share records and information with the securities regulator of another state, Canada, a Canadian province or territory, a foreign jurisdiction, the Securities and Exchange Commission, the United States Department of Justice, the Commodity Futures Trading Commission, the Federal Trade Commission, the Securities Investor Protection Corporation, a self-regulatory organization, a national or international organization of securities regulators, a federal or state banking or insurance regulator or a governmental regulatory or law enforcement agency to, among other objectives, effectuate greater uniformity in securities matters among the Federal Government, self-regulatory organizations, states and foreign governments.

[2005, c. 65, Pt. A, §2 (NEW) .]

2. **Policies to consider.** In cooperating, coordinating, consulting and sharing records and information under this section and in acting by rule, order or waiver under this chapter, the administrator may, in the administrator's discretion, take into consideration in carrying out the public interest the following general policies:

A. Maximizing effectiveness of regulation for the protection of investors; [2005, c. 65, Pt. A, §2 (NEW).]

B. Maximizing uniformity in federal and state regulatory standards; and [2005, c. 65, Pt. A, §2 (NEW).]

C. Minimizing burdens on the business of capital formation without adversely affecting essentials of investor protection. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

3. **Subjects for cooperation.** The cooperation, coordination, consultation and sharing of records and information authorized by this section includes:

A. Establishing or employing one or more designees as a central depository for licensing, registration and notice filings under this chapter and for records required or allowed to be maintained under this chapter; [2005, c. 65, Pt. A, §2 (NEW).]

B. Developing and maintaining uniform forms; [2005, c. 65, Pt. A, §2 (NEW).]

C. Conducting a joint examination or investigation; [2005, c. 65, Pt. A, §2 (NEW).]

D. Holding a joint administrative hearing; [2005, c. 65, Pt. A, §2 (NEW).]

E. Instituting and prosecuting a joint civil or administrative proceeding; [2005, c. 65, Pt. A, §2 (NEW).]

F. Sharing and exchanging personnel; [2005, c. 65, Pt. A, §2 (NEW).]

G. Coordinating registrations under section 16301 and licensing under sections 16401 to 16404 and exemptions under section 16203; [2005, c. 65, Pt. A, §2 (NEW).]

H. Sharing and exchanging records, subject to section 16607; [2005, c. 65, Pt. A, §2 (NEW).]

I. Formulating rules, statements of policy, guidelines, forms and interpretative opinions and releases; [2005, c. 65, Pt. A, §2 (NEW).]

J. Formulating common systems and procedures; [2005, c. 65, Pt. A, §2 (NEW).]

K. Notifying the public of proposed rules, forms, statements of policy and guidelines; [2005, c. 65, Pt. A, §2 (NEW).]

L. Attending conferences and other meetings among securities regulators, which may include representatives of governmental and private sector organizations involved in capital formation, considered necessary or appropriate to promote or achieve uniformity; and [2005, c. 65, Pt. A, §2 (NEW).]

M. Developing and maintaining a uniform exemption from registration for small issuers and taking other steps to reduce the burden of raising investment capital by small businesses. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

SECTION HISTORY
2005, c. 65, §A2 (NEW).

§16609. JUDICIAL REVIEW

1. **Judicial review of orders.** Notwithstanding Title 10, section 8003, subsection 5, any person aggrieved by a final order of the administrator may obtain judicial review of the order in the Superior Court of Kennebec County by filing a petition in accordance with Title 5, section 11001 and the Maine Rules of Civil Procedure, Rule 80C.

[2005, c. 65, Pt. A, §2 (NEW) .]

2. **Judicial review of rules.** A rule adopted under this chapter is subject to judicial review in accordance with the Maine Administrative Procedure Act.

[2005, c. 65, Pt. A, §2 (NEW) .]

SECTION HISTORY
2005, c. 65, §A2 (NEW).

§16610. JURISDICTION

1. **Sales and offers to sell.** The following sections do not apply to a person that sells or offers to sell a security unless the offer to sell or the sale is made in this State or the offer to purchase or the purchase is made and accepted in this State:

A. Section 16301; [2005, c. 65, Pt. A, §2 (NEW).]

B. Section 16302; [2005, c. 65, Pt. A, §2 (NEW).]

C. Section 16401, subsection 1; [2005, c. 65, Pt. A, §2 (NEW).]

D. Section 16402, subsection 1; [2005, c. 65, Pt. A, §2 (NEW).]

E. Section 16403, subsection 1; [2005, c. 65, Pt. A, §2 (NEW).]

F. Section 16404, subsection 1; [2005, c. 65, Pt. A, §2 (NEW).]

G. Section 16501; [2005, c. 65, Pt. A, §2 (NEW).]

H. Section 16506; [2005, c. 65, Pt. A, §2 (NEW).]

I. Section 16509; and [2005, c. 65, Pt. A, §2 (NEW).]

J. Section 16510. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

2. **Purchases and offers to purchase.** The following sections do not apply to a person that purchases or offers to purchase a security unless the offer to purchase or the purchase is made in this State or the offer to sell or the sale is made and accepted in this State:

A. Section 16401, subsection 1; [2005, c. 65, Pt. A, §2 (NEW).]

B. Section 16402, subsection 1; [2005, c. 65, Pt. A, §2 (NEW).]

C. Section 16403, subsection 1; [2005, c. 65, Pt. A, §2 (NEW).]

D. Section 16404, subsection 1; [2005, c. 65, Pt. A, §2 (NEW).]

E. Section 16501; [2005, c. 65, Pt. A, §2 (NEW).]

F. Section 16506; [2005, c. 65, Pt. A, §2 (NEW).]

G. Section 16509; and [2005, c. 65, Pt. A, §2 (NEW).]

H. Section 16510. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

3. **Offers in this State.** For the purpose of this section, an offer to sell or to purchase a security is made in this State, whether or not either party is then present in this State, if the offer:

A. Originates from within this State; or [2005, c. 65, Pt. A, §2 (NEW).]

B. Is directed by the offeror to a place in this State and received at the place to which it is directed. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

4. **Acceptances in this State.** For the purpose of this section, an offer to purchase or to sell is accepted in this State, whether or not either party is then present in this State, if the acceptance:

A. Is communicated to the offeror in this State and the offeree reasonably believes the offeror to be present in this State and the acceptance is received at the place in this State to which it is directed; and [2005, c. 65, Pt. A, §2 (NEW).]

B. Has not previously been communicated to the offeror, orally or in a record, outside this State. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

5. **Publications, radio, television or other electronic communications.** An offer to sell or to purchase a security is not made in this State when a publisher circulates or there is circulated on the publisher's behalf in this State a bona fide newspaper or other publication of general, regular and paid circulation that is not published in this State or that is published in this State but has had more than 2/3 of its circulation outside this State during the previous 12 months or when a radio or television program or other electronic communication, except specifically addressed electronic mail or messaging, originating outside this State is received in this State. A radio or television program or other electronic communication is considered as having originated in this State if either the broadcast studio or the originating source of transmission is located in this State, unless:

A. The program or communication is syndicated and distributed from outside this State for redistribution to the general public in this State; [2005, c. 65, Pt. A, §2 (NEW).]

B. The program or communication is supplied by a radio, television or other electronic network with the electronic signal originating from outside this State for redistribution to the general public in this State; [2005, c. 65, Pt. A, §2 (NEW).]

C. The program or communication is an electronic communication that originates outside this State and is captured for redistribution to the general public in this State by a community antenna or cable, radio, cable television or other electronic system; or [2005, c. 65, Pt. A, §2 (NEW).]

D. The program or communication consists of an electronic communication that originates in this State, but which is not intended for distribution to the general public in this State. [2005, c. 65, Pt. A, §2 (NEW).]

For purposes of this subsection, when a publication is published in editions, each edition is considered a separate publication except for material common to all editions. Radio or television programs, or other electronic communications, with changes, alterations or additions made prior to local redistribution, are considered as originating in this State.

[2005, c. 65, Pt. A, §2 (NEW) .]

6. **Investment advice and misrepresentations.** The following sections apply to a person if the person engages in an act, practice or course of business instrumental in effecting prohibited or actionable conduct in this State, whether or not either party is then present in this State:

A. Section 16403, subsection 1; [2005, c. 65, Pt. A, §2 (NEW).]

B. Section 16404, subsection 1; [2005, c. 65, Pt. A, §2 (NEW).]

C. Section 16405, subsection 1; [2005, c. 65, Pt. A, §2 (NEW).]

D. Section 16502; [2005, c. 65, Pt. A, §2 (NEW).]

E. Section 16505; and [2005, c. 65, Pt. A, §2 (NEW).]

F. Section 16506. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

SECTION HISTORY
2005, c. 65, §A2 (NEW).

§16611. SERVICE OF PROCESS

1. **Signed consent to service of process.** A consent to service of process must be signed and filed on a form designated by the administrator. A consent appointing the administrator the person's agent for service of process in a noncriminal action or proceeding against the person, or the person's successor or personal representative under this chapter or a rule adopted or order issued under this chapter after the consent is filed, has the same force and validity as if the service were made personally on the person filing the consent. A person that has filed a consent complying with this subsection in connection with a previous application for licensing or registration or a previous exemption or notice filing need not file an additional consent.

[2005, c. 65, Pt. A, §2 (NEW) .]

2. **Conduct constituting appointment of agent for service.** If a person, including a nonresident of this State, engages in an act, practice or course of business prohibited or made actionable by this chapter or a rule adopted or order issued under this chapter and the person has not filed a consent to service of process under subsection 1, the act, practice or course of business constitutes the appointment of the administrator as the person's agent for service of process in a noncriminal action or proceeding against the person or the person's successor or personal representative.

[2005, c. 65, Pt. A, §2 (NEW) .]

3. **Procedure for service of process.** Service under subsection 1 or 2 may be made by providing a copy of the process to the office of the administrator, but it is not effective unless:

A. The plaintiff, which may be the administrator, promptly sends notice of the service and a copy of the process, return receipt requested, to the defendant or respondent at the address set forth in the consent to service of process or, if a consent to service of process has not been filed, at the last known address or takes other reasonable steps to give notice; and [2005, c. 65, Pt. A, §2 (NEW).]

B. The plaintiff files an affidavit of compliance with this subsection in the action or proceeding on or before the return day of the process, if any, or within the time that the court, or the administrator in a proceeding before the administrator, allows. [2005, c. 65, Pt. A, §2 (NEW).]

[2005, c. 65, Pt. A, §2 (NEW) .]

4. **Service in administrative proceedings or civil actions by administrator.** Service pursuant to subsection 3 may be used in a proceeding before the administrator or by the administrator in a civil action in which the administrator is the moving party.

[2005, c. 65, Pt. A, §2 (NEW) .]

5. **Opportunity to defend.** If process is served under subsection 3, the court, or the administrator in a proceeding before the administrator, shall order continuances as are necessary or appropriate to afford the defendant or respondent reasonable opportunity to defend.

[2005, c. 65, Pt. A, §2 (NEW) .]

SECTION HISTORY
2005, c. 65, §A2 (NEW).

§16612. LIABILITY OF CONTROL PERSONS

In an administrative action brought by the administrator, or a civil action brought by the Attorney General for a violation of any provision of this chapter or any rule or order adopted or issued by the administrator pursuant to this chapter, every person who directly or indirectly controls another person liable for the violation, every partner, officer or director of that other person, every person occupying a similar status or performing similar functions, every employee of that other person who materially aids in the act or transaction constituting the violation and every broker-dealer, agent, investment adviser or investment adviser representative who materially aids in the act or transaction constituting the violation is liable to the same extent as that other person, unless the person otherwise secondarily liable under this chapter proves that the person did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. Any of the remedies authorized by section 16603, subsection 2 may be granted with respect to a person secondarily liable under this section. This section is not intended to abrogate any right to contribution that may exist at common law with respect to an award of restitution. [2005, c. 65, Pt. A, §2 (NEW).]

SECTION HISTORY
2005, c. 65, §A2 (NEW).

§16613. ADMINISTRATIVE DETERMINATION OF ABANDONMENT

A pending license application, registration statement, exemption filing or notice filing may be considered abandoned if the administrator has not received a response to inquiries or deficiency notices for a period of at least 120 days. The administrator shall send an abandonment notice to the last known address of the applicant or filer. The applicant or filer must respond to the abandonment notice within 30 days to avoid an

abandonment determination. The abandonment of an application does not preclude the filing of a subsequent application for licensing, registration statement, exemption filing or notice filing. [2005, c. 65, Pt. A, §2 (NEW).]

SECTION HISTORY
2005, c. 65, §A2 (NEW).

Subchapter 7: TRANSITION HEADING: PL 2005, C. 65, PT. A, §2 (NEW)

§16701. EFFECTIVE DATE

This chapter takes effect December 31, 2005. [2005, c. 65, Pt. A, §2 (NEW).]

SECTION HISTORY
2005, c. 65, §A2 (NEW).

§16702. APPLICATION

The application of this chapter to existing proceedings and existing rights and duties is described in this section. [2005, c. 65, Pt. A, §2 (NEW).]

1. **Applicability of predecessor act to pending proceedings and existing rights.** The predecessor act exclusively governs all actions or proceedings that are pending on the effective date of this chapter or may be instituted on the basis of conduct occurring before the effective date of this chapter, but a civil action may not be maintained to enforce any liability under the predecessor act unless instituted within any period of limitation that applied when the cause of action accrued or within 5 years after the effective date of this chapter, whichever is earlier.

[2005, c. 65, Pt. A, §2 (NEW) .]

2. **Continued effectiveness under predecessor act.** All effective licenses and registrations under any predecessor act, all administrative orders relating to the registrations, rules, statements of policy, interpretative opinions, declaratory rulings, no action determinations and conditions imposed on the licenses and registrations under any predecessor act remain in effect while they would have remained in effect if this chapter had not been enacted. They are considered to have been filed, issued or imposed under this chapter, but are exclusively governed by that predecessor act.

[2005, c. 65, Pt. A, §2 (NEW) .]

3. **Applicability of predecessor act to offers or sales.** The predecessor act exclusively applies to an offer or sale made within one year after the effective date of this chapter pursuant to an offering made in good faith before the effective date of this chapter on the basis of an exemption available under the predecessor act.

[2005, c. 65, Pt. A, §2 (NEW) .]

SECTION HISTORY
2005, c. 65, §A2 (NEW).

Chapter 137: BOARD OF SPEECH, AUDIOLOGY AND HEARING

Subchapter 1: GENERAL PROVISIONS

§17101. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF).]

1. **Accredited.** "Accredited" means an educational institution that is approved by the United States Department of Education, or one of its regionally accredited agencies.

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

2. **Audiologist.** "Audiologist" means an individual who is licensed under this chapter and practices audiology and who by virtue of academic and practical training presents that person to the public by the title or description of services incorporating the words audiologist, hearing clinician, hearing therapist or a similar title or description of service.

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

3. **Audiology.** "Audiology" means the application of theories, principles and procedures related to hearing and balance disorders for the purposes of assessment and treatment.

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

4. **Board.** "Board" means the Board of Speech, Audiology and Hearing pursuant to section 17201.

[2011, c. 286, Pt. O, §3 (AMD) .]

5. **Calibration.** "Calibration" means the objective adjustment of a machine to an accepted standard. The board shall adopt rules to define recalibration, accepted standards and calibration check.

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

6. **Code of ethics.** "Code of ethics" means the code of ethics pertaining to the practices of speech-language pathology, audiology and hearing aid dealing and fitting adopted by the board.

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

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

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

8. **Hearing aid.** "Hearing aid" means a wearable instrument or device designed for or offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments or accessories, including ear molds, but excluding batteries and cords.

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

9. **Hearing aid dealer and fitter.** "Hearing aid dealer and fitter" means an individual licensed under this chapter who engages in the practice of dealing in and fitting of hearing aids.

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

10. **Practice of dealing in and fitting of hearing aids.** "Practice of dealing in and fitting of hearing aids" means, but is not limited to, the selection, adaptation or sale of hearing aids, or parts of hearing aids; the testing of hearing by means of an audiometer or equivalent measurement of hearing; the making of impressions for ear molds; and hearing aid orientation that includes instruction in use and care of the instrument, information regarding expectations and limitations, information regarding the availability of additional services to meet associated needs, auditory rehabilitation, communication therapy and additional special counseling services and information regarding follow-up services, malfunctioning of hearing aids, mechanical adjustment or repair or remakes of hearing aids or ear molds.

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

11. **Sell or sale.** "Sell" or "sale" means a transfer of title or of the right to use by lease, bailment or any other contract, between a licensed hearing aid dealer and fitter or a licensed audiologist and a purchaser, but does not include wholesale transactions.

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

12. **Speech-language pathologist.** "Speech-language pathologist" means an individual who is licensed under this chapter and who practices speech-language pathology and who by virtue of academic and practical training presents the individual to the public by any title or description of services incorporating the words speech pathologist, speech therapist, speech correctionist, speech clinician, language pathologist, language therapist, logopedist, communicologist, voice therapist, voice pathologist or any similar title or description of service.

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

13. **Speech-language pathologist and audiologist.** "Speech-language pathologist and audiologist" means an individual who is dually licensed under this chapter and who practices speech-language pathology and audiology.

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

14. **Speech-language pathology.** "Speech-language pathology" means the application of theories, principles and procedures related to development and disorders of language and speech for purposes of assessment and treatment.

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

15. **Speech-language pathology aide.**

[2011, c. 286, Pt. O, §4 (RP) .]

16. **Speech-language pathology assistant.** "Speech-language pathology assistant" means an individual who meets minimum qualifications that the board may establish for speech-language pathology assistants, that are less than those qualifications established by this chapter for licensure, but must include an associate's degree or its equivalent as determined by the board, in the field of communication disorders.

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

17. **Supervision.** "Supervision" means the direct observation of work and the assessment of written records of service by a licensed speech pathologist, licensed audiologist, licensed physician or licensed hearing aid dealer and fitter licensed under this chapter commensurate with the skills of the individual as determined by the supervisor.

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

18. **Temporary license.** "Temporary license" means an individual who is licensed under this chapter and practices audiology or speech-language pathology while under supervision and training of an individual who holds a valid license in good standing in the appropriate specialty under this chapter.

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

19. **Trainee permit.** "Trainee permit" means an individual licensed under this chapter who practices in hearing aid dealing and fitting while under supervision and training of an individual who holds a valid license in good standing to practice hearing aid dealing and fitting under this chapter.

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

SECTION HISTORY
2007, c. 369, Pt. C, §3 (NEW). 2007, c. 369, Pt. C, §5 (AFF). 2011, c. 286, Pt. O, §§3, 4 (AMD).

§17102. INDIVIDUAL LICENSE

Only an individual may be licensed under this chapter and only a licensed individual may provide services for which a license is required under this chapter. [2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF).]

SECTION HISTORY
2007, c. 369, Pt. C, §3 (NEW). 2007, c. 369, Pt. C, §5 (AFF).

§17103. LICENSE REQUIRED

The board shall issue a license to an individual that meets the eligibility requirements of this chapter and files an application accompanied by the fees as set under section 17309. [2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF).]

1. **Audiology.** Licensure may be granted to an individual who meets the minimum qualifications established by the board. An individual may not practice or present that individual as an audiologist in this State unless licensed in accordance with the laws of this State.

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

2. **Hearing aid dealing and fitting.** Licensure may be granted to an individual who meets the minimum qualifications established by the board. A license issued under this section confers on the holder the right to select, fit and sell hearing aids. An individual may not engage in the sale of or practice of dealing in and fitting of in hearing aids or display a sign or present that individual to be an individual who practices the fitting of, dealing in and sale of hearing aids unless licensed under this chapter.

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

3. **Speech-language pathology.** Licensure may be granted to an individual who meets the minimum qualifications established by the board. An individual may not practice or present that individual as a speech-language pathologist unless licensed in accordance with the laws of this State.

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

4. **Speech-language pathology and audiology.** Licensure may be granted to an individual who meets the minimum qualifications established by the board. An individual may not practice or present that individual as a speech-language pathologist or audiologist unless licensed in accordance with the laws of this State.

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

5. **Speech-language pathology aides.**

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF); T. 32, §17103, sub-§5 (RP) .]

6. **Speech-language pathology assistants.** Registration may be granted to an individual who meets the minimum qualifications for a speech-language pathology assistant established by the board and who is supervised by a licensed speech-language pathologist, as set forth by the board by rule. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

7. **Foreign trained applicant.** An applicant who has completed required education outside the United States and its territories must have the applicant's academic degree validated as equivalent to a baccalaureate or master's degree conferred by a regionally accredited college or university in the United States. The board shall accept equivalency validations from regionally accredited colleges or universities in the United States or board-approved agencies specializing in education credential evaluations.

[2011, c. 286, Pt. O, §5 (NEW) .]

SECTION HISTORY
2007, c. 369, Pt. C, §3 (NEW). 2007, c. 369, Pt. C, §5 (AFF). 2011, c. 286, Pt. O, §5 (AMD).

§17104. EXEMPTIONS TO AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

Nothing in this chapter may be construed as preventing or restricting: [2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF).]

1. **Hearing aid dealer and fitter.** A hearing aid dealer and fitter licensed under this chapter or the holder of a trainee permit under this chapter from the fitting of hearing aids or the testing of hearing for the purpose of fitting hearing aids;

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

2. **Individual holding valid and current credential.** An individual who holds a valid and current credential as a speech-language or hearing clinician, issued by the Department of Education, from providing services within a local educational agency or an individual employed as a speech-language pathologist or audiologist by the Federal Government, if the individual performs speech-language pathology or audiology services solely within the confines or under the jurisdiction of the organization by which that individual is employed. The individual may, without obtaining a license under this chapter, consult with or disseminate research findings and other scientific information to speech-language pathologists and audiologists outside the jurisdiction of the organization by which that individual is employed. The individual may also offer lectures to the public for a fee, monetary or other, without being licensed under this chapter. The individual may additionally elect to be subject to this chapter; or

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

3. **Physician.** A physician or osteopathic physician licensed by this State from testing, diagnosing and treating medical problems related to disorders of language, speech or hearing, nor permitting a speech-language pathologist or audiologist to practice medicine, surgery or other healing arts.

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

4. **Individual enrolled in course leading to degree.**

[2007, c. 695, Pt. A, §40 (RP) .]

An individual who is enrolled in a course of study leading to a degree in speech-language pathology or audiology at an accredited college or accredited university is exempt as long as such activities and services constitute a part of the course of study. [2007, c. 695, Pt. A, §39 (NEW).]

SECTION HISTORY
2007, c. 369, Pt. C, §3 (NEW). 2007, c. 369, Pt. C, §5 (AFF). 2007, c. 695, Pt. A, §§39, 40 (AMD).

§17104-A. DELEGATION AUTHORIZED

1. **Delegation authorized.** This chapter may not be construed to prohibit an audiologist from delegating to an individual certain activities relating to the practice of audiology, as long as those activities are under the supervision and control of the audiologist. "Supervision and control" may not be construed to require the personal presence of the supervising and controlling audiologist at the place where those activities take place, unless a physical presence is necessary to provide patient care of the same quality as provided by the audiologist. The board may adopt rules identifying delegated activities and appropriate levels of supervision in the practice setting. Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A. The activities delegated by an audiologist under this subsection may not include the assessment and treatment of hearing and balance disorders or the dispensing of hearing aids.

[2009, c. 112, Pt. A, §23 (NEW) .]

2. **Responsibility.** An audiologist who delegates activities as described in subsection 1 to an individual is legally and ethically responsible for all of the professional activities of that individual, and the individual in this relationship is considered the audiologist's agent. This subsection may not be construed to apply to an individual acting under a separate license accepted by the State to render services independently.

[2009, c. 112, Pt. A, §23 (NEW) .]

SECTION HISTORY
2009, c. 112, Pt. A, §23 (NEW).

§17105. EXEMPTIONS; PRACTICE OF HEARING AID DEALING AND FITTING

Nothing in this chapter may be construed as preventing or restricting: [2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF).]

1. **Audiologist.** An audiologist who is licensed under this chapter from engaging in the practice of dealing in and fitting of hearing aids;

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

2. **Individual measuring human hearing.** An individual from measuring human hearing, only if the individual does not intend to sell hearing aids and accessories unless under the direct supervision of an audiologist or hearing aid dealer and fitter licensed under this chapter; or

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

3. **Physician.** A physician or osteopathic physician licensed by this State from testing, diagnosing and treating medical problems related to disorders of language, speech or hearing.

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

SECTION HISTORY
2007, c. 369, Pt. C, §3 (NEW). 2007, c. 369, Pt. C, §5 (AFF).

§17106. UNLICENSED PRACTICE

An individual who practices or presents that individual as licensed under this chapter, and who does not hold a valid license under this chapter, is subject to the provisions of Title 10, section 8003-C. [2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF).]

SECTION HISTORY
2007, c. 369, Pt. C, §3 (NEW). 2007, c. 369, Pt. C, §5 (AFF).

Subchapter 2: BOARD OF SPEECH, AUDIOLOGY AND HEARING

§17201. BOARD ESTABLISHED; MEMBERSHIP; TERMS

The Board of Speech, Audiology and Hearing, as established by Title 5, section 12004-A, subsection 48, consists of 7 members appointed by the Governor. All members must be residents of this State. Two members must have been engaged full-time in the practice of speech-language pathology for at least one year immediately preceding appointment. Two members must have been engaged full-time in the practice of audiology for at least one year immediately preceding appointment and 2 hearing aid dealers and fitters must have at least 5 years of experience. All professional members at all times must be holders of valid licenses for the practice of speech-language pathology, audiology or the practice of dealing in and fitting of hearing aids, respectively. The additional member is a public member as defined in Title 5, section 12004-A. [2011, c. 286, Pt. O, §6 (AMD).]

Appointments are for 3-year terms. Appointments of members must comply with section 60. A board member may be removed by the Governor for cause. [2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF).]

SECTION HISTORY
2007, c. 369, Pt. C, §3 (NEW). 2007, c. 369, Pt. C, §5 (AFF). 2011, c. 286, Pt. O, §6 (AMD).

§17202. MEETINGS; CHAIR

The board shall meet at least once a year to conduct its business and to elect a chair. Additional meetings are 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. [2013, c. 246, Pt. B, §28 (AMD).]

SECTION HISTORY
2007, c. 369, Pt. C, §3 (NEW). 2007, c. 369, Pt. C, §5 (AFF). 2013, c. 246, Pt. B, §28 (AMD).

§17203. POWERS AND DUTIES

The board has the following powers and duties. [2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF).]

1. **Board to administer, coordinate and enforce.** The board shall administer, coordinate and enforce this chapter and evaluate the qualifications of and approve the examinations to be taken by applicants for licensure under this chapter.

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

2. **Rules.** The board may, in accordance with the Maine Administrative Procedure Act, adopt rules commensurate with the authority vested in it by this chapter, including, but not limited to, rules relating to professional conduct and establishing ethical standards of practice. The board, by rule, shall set the standard of professional conduct of every individual that holds a license under this chapter.

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

SECTION HISTORY
2007, c. 369, Pt. C, §3 (NEW). 2007, c. 369, Pt. C, §5 (AFF).

Subchapter 3: LICENSE

§17301. ELIGIBILITY FOR LICENSE

The board shall issue a license to an applicant who meets the following eligibility requirements of this chapter and who files an application accompanied by the fees as set under section 17309. [2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF).]

1. **Audiologist.** An audiologist must have a master's degree, a doctoral degree or a degree determined by the board to be equivalent, from an accredited institution that is consistent with the requirements for the American Speech-Language-Hearing Association Certificate of Clinical Competency in Audiology or the requirements of its successor or other organization approved by the board. The board may establish the requirements for academic course work, supervised clinical practice, supervised professional employment and written examination.

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

2. **Hearing aid dealer and fitter.** A hearing aid dealer and fitter must pass a qualifying examination approved by the board and must:

A. Be at least 18 years of age; [2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF).]

B. Have a high school diploma or its equivalency; and [2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF).]

C. Have obtained a trainee permit pursuant to subsection 7 and have received a minimum of 750 hours of training in the practice of dealing in and fitting of hearing aids under the direct supervision of a licensed hearing aid dealer and fitter or licensed audiologist during a period of not fewer than 6 months nor more than 18 months. [2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF).]

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

3. **Speech-language pathologist.** A speech-language pathologist must have a master's degree, a doctoral degree or a degree determined by the board to be equivalent from an accredited institution that is consistent with the requirements for the American Speech-Language-Hearing Association Certificate of Clinical Competency in Speech Pathology or the requirements of its successor or other organization approved by the board. The board may establish the requirements for academic course work, supervised clinical practice, supervised professional employment and written examination.

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

4. **Speech-language pathologist and audiologist.** A speech-language pathologist and audiologist must have a master's degree, a doctoral degree or a degree determined by the board to be equivalent, from an accredited institution that is consistent with the requirements for the American Speech-Language-Hearing Association Certificate of Clinical Competency in Speech Pathology and Audiology or the requirements of its successor or other organization approved by the board. The board may establish the requirements for academic course work, supervised clinical practice, supervised professional employment and written examination.

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

5. **Speech-language pathology assistant.** A speech-language pathology assistant must have an associate’s degree from an accredited institution in the field of communication disorders, or its equivalent as determined by the board, and must meet such other minimum qualifications as the board may establish.

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

6. **Temporary license.** An applicant for a temporary license must meet the education requirements for licensure as outlined in subsection 1, 3 or 4 and show to the satisfaction of the board that the applicant is supervised and trained by an individual who holds a license under this chapter in the appropriate specialty, which entitles the applicant to practice speech-language pathology or audiology under supervision while completing the requirements for licensure. The temporary license is effective for one year and may be renewed once by the board.

[2007, c. 1, §19 (COR) .]

7. **Trainee permit.** An applicant for a trainee permit must meet the licensure requirements as set forth in subsection 2, paragraphs A and B and provide the signature of the licensed hearing aid dealer and fitter or licensed audiologist who is licensed under this chapter and who is responsible for the direct supervision of the trainee. A trainee permit is valid for 18 months. The board may approve the renewal of a trainee permit once. An individual holding a trainee permit may not engage in the practice of dealing in or fitting of hearing aids except while under supervision of a licensed hearing aid dealer and fitter or licensed audiologist licensed under this chapter.

An individual who holds a trainee permit shall notify the board in writing upon completion of the training required under subsection 2, paragraph C and shall sit for the next scheduled licensing examination. If the holder of a trainee permit successfully passes the examination, the board may issue a license upon the payment of the fees as set under section 17309.

If the holder of a trainee permit fails the examination, that individual may retake the examination, upon payment of the fees as set under section 17309, within one year after completing the training under subsection 2, paragraph C.

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

SECTION HISTORY
RR 2007, c. 1, §19 (COR). 2007, c. 369, Pt. C, §3 (NEW). 2007, c. 369, Pt. C, §5 (AFF).

§17302. EXAMINATION REQUIREMENTS

1. **Audiology and speech-language pathology.** Each applicant for licensure as a speech-language pathologist or audiologist under this chapter must pass an examination approved by the board.

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

2. **Hearing aid dealer and fitter.** Each applicant for licensure as a hearing aid dealer and fitter under this chapter must pass an examination approved by the board. The qualifying examination consists of, but is not limited to:

A. Tests of knowledge in the following areas as they pertain to the fitting and sale of hearing aids:

(1) Basic physics of sound;

(2) The anatomy and physiology of the ear;

(3) The function of hearing aids; and

(4) Types of hearing loss and deafness; and [2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF).]

B. Practical tests of proficiency in the following techniques as they pertain to the fitting of hearing aids:

(1) Pure tone audiometry, including air conduction testing and bone conduction testing;

(2) Live voice or recorded voice speech audiometry, including speech reception threshold testing and speech recognition testing;

(3) Criteria for masking;

(4) Recording and evaluation of audiograms and speech audiometry to determine proper selection and adaptation of a hearing aid;

(5) Taking ear mold impressions; and

(6) Evidence of knowledge regarding consumer laws as they apply to licensees and trainees. [2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF).]

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

SECTION HISTORY
2007, c. 369, Pt. C, §3 (NEW). 2007, c. 369, Pt. C, §5 (AFF).

§17303. LICENSURE; ANOTHER JURISDICTION

An applicant who is licensed under the laws of another jurisdiction is governed by this subsection. The board may waive the examination and grant licensure to an applicant who presents proof of current licensure in another jurisdiction that maintains professional standards determined by the board to be substantially equivalent to those set forth in this chapter, if no cause exists for denial of a license under section 17307. [2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF).]

SECTION HISTORY
2007, c. 369, Pt. C, §3 (NEW). 2007, c. 369, Pt. C, §5 (AFF).

§17304. SCOPE OF PRACTICE; AUDIOLOGISTS

Audiologists identify, assess, manage and interpret test results related to disorders of human hearing, balance and other neural systems, including the dispensing of hearing aids. Audiologists also supervise programs and services related to human communication and its disorders; counsel families, individuals and caregivers; and provide consultation, make referrals and develop preventative programs. [2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF).]

The provisions of this section pertaining to the scope of practice for audiologists neither limit nor infringe upon licensure laws of other regulated professions in this State. [2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF).]

SECTION HISTORY
2007, c. 369, Pt. C, §3 (NEW). 2007, c. 369, Pt. C, §5 (AFF).

§17305. HEARING AID DEALING AND FITTING PRACTICE STANDARDS

For the purpose of this section, "dealer-licensee" means an individual licensed under this chapter as a hearing aid dealer and fitter or audiologist who engages in the practice of dealing in and fitting of hearing aids as defined under section 17101, subsection 10. [2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF).]

1. **Payment; 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 the 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 shall 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 shall also return to the purchaser any hearing aids, devices, accessories and ear molds that the dealer-licensee has received from the purchaser. The dealer-licensee shall contact the purchaser and provide any service, fitting or repair that may be necessary for the beneficial and comfortable use of the hearing aid. [2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF).]

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

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 are 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 shall also return to the purchaser any hearing aids, devices, accessories and ear molds that the dealer-licensee has received from the purchaser.

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

3. **Violations.** A 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. A violation of the requirements of this section, in addition to being unethical conduct under section 17307, constitutes a violation of the Maine Unfair Trade Practices Act.

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

4. **Dealer records.** Each dealer-licensee shall keep records for at least 6 years on each person who purchases a hearing aid to include:

A. Results of measurement of known hearing; [2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF).]

B. Medical clearance for a hearing aid when indicated under this section or purchaser's waiver of need for medical clearance; [2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF).]

C. A copy of the warranty; [2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF).]

D. Date and type of hearing aid sold to purchaser; [2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF).]

E. Date and type of replacement hearing aids; and [2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF).]

F. Type of ear mold and other pertinent information such as reports from speech and hearing centers. [2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF).]

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

5. **Calibration.** Each audiometer used in the measurement of hearing when testing and fitting a hearing aid must meet calibration standards as defined in the board's rules. Dealer-licensees shall obtain an objective calibration check on permanently installed and portable audiometers at least once a year. If an objective calibration check shows an audiometer to deviate more than 10 decibels from the calibration standard, the audiometer must be recalibrated by either a calibration laboratory or the audiometer manufacturer before it may be used to test hearing. Date of the last calibration check or recalibration must be prominently displayed on the audiometer.

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

6. **Purchase agreement.** A dealer-licensee who practices the fitting of and dealing in or sale of hearing aids shall deliver to each person supplied with a hearing aid a written notice prior to or at the time the hearing aid is purchased. The notice must include all of the provisions prescribed in this section. The board shall prepare a model notice containing all the requirements of this section and shall furnish copies upon request.

A. The notice must include the dealer-licensee's signature, address of place of business and license number. [2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF).]

B. The notice must include the mailing address of the board. [2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF).]

C. The notice must include specifications as to the make and model of the hearing aid furnished, including:

(1) The brand name or manufacturer's name and the model;

(2) The serial number, notification of which must be given in writing later if not known at the time of the notice; and

(3) The condition of the hearing aid, whether new, used or reconditioned. [2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF).]

D. The notice must include the full terms of sale, including the following terms.

(1) There must be a full and complete disclosure of the cost of financing the purchase of the hearing aid.

(2) The notice must include the complete terms of service, including cost of service, what services are available, by whom and for how long the service is provided, including house or office calls, when applicable, and the terms of aftercare fitting.

(3) If the initial price of the hearing aid furnished is reduced by trade-in allowance or discount, the notice must conspicuously include the initial price of the hearing aid before trade-in allowance or discount, the amount of the trade-in allowance or discount and the final price to the consumer.

(4) The notice must include the provisions of the 30-day trial period and 60-day medical return period as set out under this section. [2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF).]

E. The notice must include the date of the sale. [2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF).]

F. The notice must include the terms of guarantee or warranty, including:

(1) The characteristics or properties of the hearing aid or parts of the hearing aid covered by or excluded from the guarantee or warranty;

(2) The duration of the guarantee or warranty;

(3) The conditions, if any, that the purchaser must fulfill before the guarantor or warrantor must perform the guarantor's or warrantor's obligations;

(4) The obligations of the guarantor or warrantor, including obligations as to repair or replacement of hearing aids and refunding of the purchase price or part of the purchase price; and

(5) The identity and address of the guarantor or warrantor. [2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF).]

G. When an individual practicing the fitting and sale of hearing aids furnishes to a purchaser a hearing aid of a different make, model or specification than requested, the notice must include a statement of this fact. [2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF).]

H. The notice must conspicuously include the following: "An examination or representation made by a dealer-licensee in connection with the fitting and selling of a hearing aid or aids is not an examination, diagnosis or prescription by an individual licensed to practice medicine in this State and may not be regarded as medical opinion or advice." [2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF).]

I. The board may adopt rules to define further the requirements of this section in order to provide the purchaser with additional information to be contained in the notice provisions. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF).]

J. A provision of a contract that limits or conditions in any way the right guaranteed to purchasers by this section is deemed to be against public policy and void. A violation of the requirements of this section, in addition to being unethical conduct as defined by the regulations pursuant to section 17307, constitutes a violation of the Maine Unfair Trade Practices Act. [2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF).]

K. A dealer-licensee may not sell or furnish a hearing aid to a person 18 years of age or younger without a written statement, signed by a physician with specialized training in the field of otolaryngology, that the person has had an ear or hearing examination within 90 days of the purchase or furnishing of the hearing aid and that a hearing aid is recommended for the person. The board shall adopt rules for the requirements for reexamination. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

The board shall by rule list and define certain medical conditions affecting hearing. If a dealer has notice of the existence of one or more of the conditions in the case of a prospective purchaser of a hearing aid, whether by the dealer-licensee’s observation of the prospective purchaser or by information furnished by the prospective purchaser, fitting of the hearing aid must be delayed until the purchaser has had an ear or hearing examination administered by a physician with specialized training in the field of otolaryngology or by an audiologist who, as a result of such an examination, recommends in writing a hearing aid for the prospective purchaser.

Nothing in this chapter may be construed to require an ear or hearing examination by a physician or audiologist of a person who objects to the examination on the grounds that the examination conflicts with the tenets and practices of a church or religious denomination of which the person is a member or adherent. [2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF).]

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

SECTION HISTORY
2007, c. 369, Pt. C, §3 (NEW). 2007, c. 369, Pt. C, §5 (AFF).

§17306. SCOPE OF PRACTICE; SPEECH-LANGUAGE PATHOLOGIST

Speech-language pathologists identify, assess and provide treatment for individuals of all ages with communication and swallowing disorders. Speech-language pathologists may: [2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF).]

1. **Human communication.** Manage and supervise programs and services related to human communication and its disorders;

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

2. **Speech-language pathology.** Counsel families, individuals and caregivers with respect to speech-language pathology; and

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

3. **Consultation; referrals; programs.** Provide consultation, make referrals and develop preventative programs.

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

The provisions of this section pertaining to the scope of practice for speech-language pathologists neither limit nor infringe upon licensure laws of other regulated professions in this State. [2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF).]

SECTION HISTORY
2007, c. 369, Pt. C, §3 (NEW). 2007, c. 369, Pt. C, §5 (AFF).

§17307. DENIAL OR REFUSAL TO RENEW LICENSE; DISCIPLINARY ACTION

The board has authority to investigate all complaints made to it and all cases of noncompliance with or violation of this chapter. In addition to the grounds enumerated in Title 10, section 8003, subsection 5, paragraph A, the board may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5, paragraphs B and C for: [2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF).]

1. **Unfair and deceptive practices.** Engaging in unfair or deceptive practices as defined by the rules established by the board or violating the code of ethics adopted and published by the board, including selling or causing to be sold a hearing aid to a person who has not been given tests such as pure tone, air and bone audiometry or other hearing assessments as determined by the board. The results of these tests must be permanently filed; or

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

2. **Negligence.** Incompetence, negligence or neglect in the conduct of the practice of dealing in and fitting of hearing aids, including, but not limited to, the improper fitting of a hearing aid, the sale of a hearing aid to a person with normal hearing, making an ear mold impression or fitting an ear mold without prior inspection of the external ear canal, making an ear mold impression or fitting an ear mold after prior inspection revealed the presence of, or impacted, cerumen in the ear canal, the failure to indicate the need for medical or audiological evaluation when the prospective purchaser's history reveals a probable risk of disease or progressive hearing impairment, the failure to make the required medical referrals, the incorrect reporting of hearing test results to a person, the failure to be present to fit the final hearing aid in the ear of the purchaser and the tampering with a satisfactorily performing hearing aid owned by a purchaser or potential purchaser to cause that hearing aid to no longer perform correctly.

[2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF) .]

SECTION HISTORY
2007, c. 369, Pt. C, §3 (NEW). 2007, c. 369, Pt. C, §5 (AFF).

§17308. LICENSE; RENEWAL

A license issued under this chapter expires at a time that the commissioner may designate. Every individual licensed under this chapter shall pay the renewal fee as set under section 17309. Renewals are contingent upon evidence of participation in continuing professional education as determined by the board; temporary licenses and trainee permits are exempt from this requirement. A license may be renewed up to 90 days after the date of its expiration upon payment of the late fee and renewal fee under section 17309. An individual who submits an application for renewal more than 90 days after the license expiration date is subject to all requirements governing new applicants under this chapter, except that the board may, in its discretion, waive examination if that renewal application is received together with the late fee and renewal fee under section 17309 within 2 years from the date of the expiration. [2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF).]

SECTION HISTORY
2007, c. 369, Pt. C, §3 (NEW). 2007, c. 369, Pt. C, §5 (AFF).

§17309. FEES

The Director of the Office of Professional and Occupational Regulation within the Department of Professional and Financial Regulation may establish by rule fees for the purposes authorized under this chapter in amounts that are reasonable and necessary for their respective purposes, except that a fee for any one purpose may not exceed $325 annually. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF); 2011, c. 286, Pt. B, §5 (REV).]

SECTION HISTORY
2007, c. 369, Pt. C, §3 (NEW). 2007, c. 369, Pt. C, §5 (AFF). 2011, c. 286, Pt. B, §5 (REV).

§17310. INACTIVE STATUS

The board shall adopt rules that provide that an individual licensed under this chapter may, upon written request, be placed on inactive status. The board may place the licensee on inactive status only upon proper application by the licensee. During inactive status, the licensee must renew the license and pay the license fees as set under section 17309, but is not required to meet the continuing education requirements under

section 17308. The board shall adopt rules by which a license in an inactive status may be reactivated. Rules adopted pursuant to this section are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A. [2007, c. 369, Pt. C, §3 (NEW); 2007, c. 369, Pt. C, §5 (AFF).]

SECTION HISTORY
2007, c. 369, Pt. C, §3 (NEW). 2007, c. 369, Pt. C, §5 (AFF).

Chapter 139: MAINE FUEL BOARD

Subchapter 1: GENERAL PROVISIONS

§18101. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF).]

1. **Accessory equipment.** "Accessory equipment" means equipment, materials and controls that are not integral parts of the oil, solid fuel, propane or natural gas burning unit but that are connected to the oil, solid fuel, propane or natural gas burning unit and have the potential to affect the safety of the equipment.

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

2. **ASME container.** "ASME container" means a container constructed in accordance with a code developed by the American Society of Mechanical Engineers or its successor organization.

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

3. **Board.** "Board" means the Maine Fuel Board established in Title 5, section 12004-A, subsection 49.

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

4. **Chimney.** "Chimney" means a factory-built, masonry or metal chimney constructed to allow one or more vertical or nearly vertical passageways for conveying flue gases from a building to the outside atmosphere.

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

5. **Dispensing station.** "Dispensing station" means a licensed facility consisting of fixed equipment where propane or natural gas is stored and dispensed into portable containers.

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

6. **Equipment installations.** "Equipment installations" means the installation, alteration or repair of oil, solid fuel, propane or natural gas burning equipment and chimneys, including accessory equipment as relating only to the safety of the installation. Associated electrical equipment must be wired in compliance with the rules of the Electricians' Examining Board established in Title 5, section 12004-A, subsection 13.

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

7. **Natural gas.** "Natural gas" means hydrocarbon fuel in a gaseous state with a composition of predominantly CH4, delivered by pipeline to the property of the consumer.

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

8. **NFPA.** "NFPA" means the National Fire Protection Association.

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

9. **Propane.** "Propane" means a hydrocarbon fuel with a chemical composition of predominantly C3H8, whether recovered from natural gas or from crude oil.

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

10. **Self-service dispensing station.** "Self-service dispensing station" means a licensed facility where propane or natural gas is dispensed into permanently mounted fuel containers on vehicles and is operated by the general public at a dispensing station.

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

11. **Solid fuel.** "Solid fuel" means coal, wood, pellets and other similar organic materials or any combination of them.

[2013, c. 217, Pt. I, §1 (AMD) .]

12. **State fuel inspector.** "State fuel inspector" means a person employed by the Department of Professional and Financial Regulation, Office of Professional and Occupational Regulation to enforce the provisions of this chapter.

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF); 2011, c. 286, Pt. B, §5 (REV) .]

13. **Wood pellets.** "Wood pellets" means a wood fuel product manufactured from compressed sawdust or other wood by-product that is pressed or extruded into pieces of uniform size and shape that are designed to be fed in bulk to a combustion chamber. "Wood pellets" does not include ground wood chips.

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

SECTION HISTORY
2009, c. 344, Pt. C, §3 (NEW). 2009, c. 344, Pt. E, §2 (AFF). 2011, c. 286, Pt. B, §5 (REV). 2013, c. 217, Pt. I, §1 (AMD).

§18102. LICENSE REQUIRED

A person who installs or services oil, solid fuel, propane or natural gas burner equipment and a facility where propane or natural gas is dispensed must be licensed under this chapter, except as provided under section 18104. [2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF).]

SECTION HISTORY
2009, c. 344, Pt. C, §3 (NEW). 2009, c. 344, Pt. E, §2 (AFF).

§18103. VIOLATIONS; PENALTIES

1. **Unlicensed practice.** A person, firm or corporation who makes an oil, solid fuel, propane or natural gas installation without being licensed as provided by subchapter 3 or who employs an unlicensed person to make installations is subject to the provisions of Title 10, section 8003-C.

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

2. **Strict liability.** Except as otherwise specifically provided, violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

SECTION HISTORY
2009, c. 344, Pt. C, §3 (NEW). 2009, c. 344, Pt. E, §2 (AFF).

§18104. EXCEPTIONS

The licensing provisions of this chapter do not apply to: [2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF).]

1. **Electricians.** An electrician duly licensed under chapter 17 insofar as the installation of electrical equipment or the performance of any electrical work involved in the installation of oil or solid fuel or propane or natural gas burners is concerned;

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

2. **Engineers and operators.** A person holding an engineer's license issued under section 15109, or working under the general supervision of one so licensed while performing oil or solid fuel burner repair and maintenance on propane or natural gas burning equipment as is necessary in the steam or heating plant where that person is employed, if that work is performed in compliance with section 18107, or a person employed by companies under the jurisdiction of the Public Utilities Commission;

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

3. **Equipment.** Solid fuel burning fireplace stoves, room heaters and stoves designed exclusively for heating and cooking and not attached to a central heating system and heating or cooling equipment operated by means of solar energy;

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

4. **Highway transport drivers.** A highway transport driver who drives a tractor-trailer commercial motor vehicle that has a cargo tank with a water capacity of 9,000 gallons or more and delivers propane to a bulk plant, as defined in NFPA standards, Number 58, or industrial customers;

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

5. **Individual user of a self-service propane or natural gas dispensing station.** An individual user of a self-service propane or natural gas dispensing station;

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

6. **Mechanics.** The installation of air-handling equipment, sheet metal and other specialized equipment and services associated with oil or solid fuel or propane or natural gas burning equipment made by qualified mechanics of those trades who do not hold a master oil and solid fuel burning technician's license under section 18132, journeyman oil and solid fuel burning technician's license under section 18133, apprentice oil and solid fuel burning technician's license under section 18134 or propane and natural gas technician's license under section 18135. Such an installation must conform to the standards and rules of the board and must be made under the supervision of a master oil and solid fuel burning technician or propane and natural gas technician having responsibility for the installation;

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

7. **Personal abode.** A person making an oil, solid fuel, propane or natural gas burning installation in a single family residence occupied or to be occupied by that person as that person's bona fide personal abode, provided that the installation conforms with standards and rules of the board;

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

8. **Persons working on internal combustion engines and associated gas trains.** A person who works on internal combustion engines and associated gas trains;

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

9. **Plumbers.** A plumber duly licensed under chapter 49 insofar as the work covered by that chapter is involved; and

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

10. **Regular employees of industrial facilities.** Regular employees of industrial plants installing and servicing oil, solid fuel, propane or natural gas burning equipment of greater than 10,000,000 BTUs per hour input.

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

SECTION HISTORY
2009, c. 344, Pt. C, §3 (NEW). 2009, c. 344, Pt. E, §2 (AFF).

§18105. MUNICIPAL LICENSES NOT REQUIRED; MUNICIPAL PERMITS

A municipality, notwithstanding any provision of a municipal charter, may not require an oil and solid fuel burning technician or a propane and natural gas technician to be municipally licensed. A municipality may not issue a permit for an oil, solid fuel, propane or natural gas burning installation unless satisfied that the person applying for the permit complies with the requirements of this chapter. [2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF).]

SECTION HISTORY
2009, c. 344, Pt. C, §3 (NEW). 2009, c. 344, Pt. E, §2 (AFF).

§18106. MAJOR EQUIPMENT SALES INFORMATION

Upon request by the board or its authorized agent, a wholesaler or retailer of major oil, solid fuel, propane and natural gas heating equipment shall provide sales information to the board regarding that equipment. Sales information regarding the equipment may include the identity of the purchaser, the date of purchase, the make, model and serial number, if applicable, and any other information requested. [2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF).]

SECTION HISTORY
2009, c. 344, Pt. C, §3 (NEW). 2009, c. 344, Pt. E, §2 (AFF).

§18107. INSTALLATIONS TO CONFORM TO STANDARDS

1. **Board standards and rules.** Installation of oil, solid fuel, propane and natural gas burning equipment and chimneys may not be made in this State unless the installation complies with all the standards and rules adopted by the board. These standards and rules may not prohibit:

A. The continued use of an existing connection of a solid fuel burning appliance to a chimney flue to which another appliance burning oil or solid fuel is connected for any chimney existing and in use prior to February 2, 1998 as long as:

(1) Sufficient draft is available for each appliance;

(2) The chimney is lined and structurally intact; and

(3) A carbon monoxide detector is installed in the building near a bedroom; or [2011, c. 225, §2 (NEW).]

B. The connection of a solid fuel burning appliance to a chimney flue to which another appliance burning oil or solid fuel is connected for any chimney existing and in use on or after February 2, 1998 as long as:

(1) Sufficient draft is available for each appliance;

(2) The chimney is lined and structurally intact;

(3) A carbon monoxide detector is installed in the building near a bedroom;

(4) The solid fuel burning appliance has been listed by Underwriters Laboratories or by an independent, nationally recognized testing laboratory or other testing laboratory approved by the board; and

(5) The solid fuel burning appliance is installed in accordance with the manufacturer's installation specifications. [2011, c. 225, §2 (NEW).]

[2011, c. 225, §2 (NEW) .]

2. **Technician responsibility for ascertaining total conformance to the standards and rules.** Whenever oil, solid fuel, propane and natural gas burning equipment, accessory equipment or its installation are separately contracted, the master oil and solid fuel burning technician or the propane and natural gas technician in charge of the installation is responsible for ascertaining total conformance to the standards and rules adopted by the board.

[2011, c. 225, §2 (NEW) .]

3. **Proof of license.** Whenever a state fuel inspector authorized under section 18110 finds a person installing or assisting in an oil, propane, natural gas or solid fuel burning appliance installation, that person shall, on request of the state fuel inspector, provide evidence of being properly licensed when required by this chapter and, if unable to provide the evidence, shall furnish the state fuel inspector with that person's full name and address and, if applicable, the full name and address of the master oil and solid fuel burning technician or the propane and natural gas technician in charge.

[2011, c. 225, §2 (NEW) .]

SECTION HISTORY
2009, c. 344, Pt. C, §3 (NEW). 2009, c. 344, Pt. E, §2 (AFF). 2009, c. 652, Pt. A, §46 (AMD). 2011, c. 225, §2 (RPR).

§18108. DISCLOSURES; PENALTIES

A person, firm or company that installs a chimney or fireplace for compensation must issue, prior to the installation taking place, a disclosure statement to a consumer that the chimney or fireplace complies with NFPA standards, Number 211. The disclosure statement must be in a format approved by the board and contain the information the board considers necessary. Any chimney or fireplace installer who fails to provide the required disclosure statement to a consumer prior to the installation of a chimney or fireplace commits a civil violation for which a fine of not less than $500 may be adjudged. [2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF).]

SECTION HISTORY
2009, c. 344, Pt. C, §3 (NEW). 2009, c. 344, Pt. E, §2 (AFF).

§18109. INSPECTION OF ABOVEGROUND AND UNDERGROUND PROPANE AND NATURAL GAS STORAGE FACILITIES AND ROOFTOP INSTALLATIONS OF ASME CONTAINERS

The board shall inspect and issue permits to aboveground and underground propane and natural gas storage facilities and rooftop installations of ASME containers to a person who applies and submits a fee under section 18143. [2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF).]

SECTION HISTORY
2009, c. 344, Pt. C, §3 (NEW). 2009, c. 344, Pt. E, §2 (AFF).

§18110. STATE FUEL INSPECTOR

1. **Inspection.** A state fuel inspector, upon written complaint or whenever a state fuel inspector considers it necessary, for purposes of examination may enter into and upon and inspect all buildings, dispensing stations and premises within that state fuel inspector's jurisdiction at all reasonable hours. An inspector may enter a building, dispensing station or other premises within that state fuel inspector's jurisdiction only with the permission of the person having control of the building, dispensing station or other premises or, after hearing, upon order of the court. Whenever a state fuel inspector finds any installation of oil, solid fuel, propane or natural gas equipment or a chimney in a building or structure that does not comply with the requirements of this chapter, that inspector shall order that the installation be removed or remedied, and that order must be complied with immediately by the owner or occupant of the building, dispensing station or other premises or by the installer of the equipment in violation. If a state fuel inspector finds an installation that falls under the inspector's jurisdiction in a building, dispensing station or structure that creates a danger to other property or to the public, the inspector may serve a written order upon the owner and the occupant, if any, to vacate within a reasonable period of time to be stated in the order.

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

2. **Order to correct deficiency; appeal.** A person ordered by a state fuel inspector to correct a deficiency or to vacate a building or structure may appeal the order by filing a written notice of appeal with the board within 30 days after receipt of the order. The board shall schedule an appeal hearing as soon as practicable upon receipt of a timely notice of appeal. The appeal hearing must be conducted de novo and is governed by the provisions of the Maine Administrative Procedure Act applicable to adjudicatory hearings. The state fuel inspector who issued the order on appeal has the burden of proof at the appeal hearing. If the board upholds the order, it shall prescribe the time required for compliance. The person receiving the order under subsection 1 may appeal the board's decision by filing a petition for review in Superior Court in accordance with Title 5, chapter 375, subchapter 7 within 30 days after receipt of the board's written decision.

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

3. **Final orders.** The decision of the Superior Court on an appeal is final. An order by a state fuel 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 in subsection 2.

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

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 dispensing station or structure is located for an injunction to enforce that order. If the court determines, on hearing such a petition, that a lawful final order was issued, it shall order compliance.

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

5. **Authority of state fuel inspectors.** A state fuel inspector has authority throughout the several counties of the State, similar to that of a sheriff's, relating to enforcement of this chapter and rules adopted under this chapter. These powers are limited to the issuing of citations, the serving of summonses, the conducting of investigations, the ordering of corrections of violations and the issuance of orders to vacate a building or structure in accordance with this chapter. A state fuel inspector may review the oil, solid fuel, propane or natural gas equipment or chimney installation records of any person licensed under this chapter or any person performing installations authorized under this chapter.

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

SECTION HISTORY
2009, c. 344, Pt. C, §3 (NEW). 2009, c. 344, Pt. E, §2 (AFF).

§18111. FAILURE TO COMPLY WITH ORDER OF A STATE FUEL INSPECTOR

If the owner, occupant of any building or an installer neglects or refuses, without justification, for more than 10 days to comply with any order of a state fuel inspector, that person commits a civil violation for which a fine of not less than $100 for each day's neglect may be adjudged. [2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF).]

SECTION HISTORY
2009, c. 344, Pt. C, §3 (NEW). 2009, c. 344, Pt. E, §2 (AFF).

Subchapter 2: MAINE FUEL BOARD

§18121. BOARD ESTABLISHED; MEMBERSHIP; TERMS

The Maine Fuel Board, established by Title 5, section 12004-A, subsection 49, consists of 9 members. The Governor shall appoint the members described in subsections 1 to 4. All members must be residents of this State. The 7 members that are required to hold a license must have been licensed for at least the 7 years immediately prior to appointment to the board. The board consists of: [2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF).]

1. **Oil and solid fuel burning technicians.** Three members who each hold a valid license as a master oil and solid fuel burning technician, including one licensed by a solid fuel authority;

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

2. **Propane and natural gas technicians.** Three members who each hold a valid license as a propane and natural gas technician, including one who works in the natural gas industry;

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

3. **Dual licensed member.** One member who is licensed both as a master oil and solid fuel burning technician and a propane and natural gas technician;

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

4. **Public member.** One public member as defined in Title 5, section 12004-A; and

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

5. **Member appointed by Commissioner of Public Safety.** One member appointed by the Commissioner of Public Safety as that commissioner's representative.

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

Appointments are for 3-year terms. Appointments of members must comply with Title 10, section 8009. A board member may be removed by the Governor for cause. [2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF).]

SECTION HISTORY
2009, c. 344, Pt. C, §3 (NEW). 2009, c. 344, Pt. E, §2 (AFF).

§18122. MEETINGS; CHAIR

The board shall meet at least once a year to conduct its business and to elect a chair. Additional meetings are 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. [2013, c. 246, Pt. B, §29 (AMD).]

SECTION HISTORY
2009, c. 344, Pt. C, §3 (NEW). 2009, c. 344, Pt. E, §2 (AFF). 2013, c. 246, Pt. B, §29 (AMD).

§18123. POWERS AND DUTIES

The board has the following powers and duties. [2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF).]

1. **Board to enforce this chapter.** The board shall enforce the provisions of this chapter.

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

2. **Rules.** The board may adopt rules commensurate with the authority vested in it by this chapter, including, but not limited to, rules adopting technical standards for the proper installation and servicing of oil, solid fuel, propane and natural gas burning equipment. Rules adopted pursuant to this subsection may not prohibit:

A. The continued use of an existing connection of a solid fuel burning appliance to a chimney flue to which another appliance burning oil or solid fuel is connected for any chimney existing and in use prior to February 2, 1998 as long as:

(1) Sufficient draft is available for each appliance;

(2) The chimney is lined and structurally intact; and

(3) A carbon monoxide detector is installed in the building near a bedroom; or [2011, c. 225, §3 (NEW).]

B. The connection of a solid fuel burning appliance to a chimney flue to which another appliance burning oil or solid fuel is connected for any chimney existing and in use on or after February 2, 1998 as long as:

(1) Sufficient draft is available for each appliance;

(2) The chimney is lined and structurally intact;

(3) A carbon monoxide detector is installed in the building near a bedroom;

(4) The solid fuel burning appliance has been listed by Underwriters Laboratories or by an independent, nationally recognized testing laboratory or other testing laboratory approved by the board; and

(5) The solid fuel burning appliance is installed in accordance with the manufacturer's installation specifications. [2011, c. 225, §3 (NEW).]

The board may adopt by rule national or other technical standards, in whole or in part, that it considers necessary to carry out the provisions of this chapter. Rules adopted pursuant to this subsection are routine technical rules as defined by Title 5, chapter 375, subchapter 2-A.

[2011, c. 225, §3 (RPR) .]

3. **Emerging technologies.** The board may authorize specific pilot projects relating to emerging fuel fired heating technologies and may waive application of its rules to approved pilot projects. The board may request from the proponent of a pilot project such information as the board may require to evaluate the potential benefit of the pilot project. An order of the board approving a pilot project must describe the nature, scope and duration of the project; must contain such performance expectations, conditions and reporting requirements as the board considers necessary to ensure accountability and protect the public health and safety; and must identify the board rules waived in connection with the project. An emerging technologies pilot project authorized by the board is subject to the provisions of sections 18103 and 18111.

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

SECTION HISTORY
2009, c. 344, Pt. C, §3 (NEW). 2009, c. 344, Pt. E, §2 (AFF). 2009, c. 652, Pt. A, §47 (AMD). 2011, c. 225, §3 (AMD).

Subchapter 3: LICENSING

§18131. GENERAL QUALIFICATIONS

An applicant for a license under this subchapter must submit a properly completed application on forms furnished by the board, together with the fee established under section 18143. [2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF).]

SECTION HISTORY
2009, c. 344, Pt. C, §3 (NEW). 2009, c. 344, Pt. E, §2 (AFF).

§18132. MASTER OIL AND SOLID FUEL BURNING TECHNICIAN

1. **Scope of license.** A master oil and solid fuel burning technician may install, clean, service, alter or repair oil and solid fuel burning equipment and must hold one or more of the following authorities: number one and number 2 oils up to 15 gallons per hour; number one and number 2 oils over 15 gallons per hour; number 4, number 5 and number 6 oils; number one to number 6 oils; and solid fuel.

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

2. **Professional qualifications.** Each applicant for a master oil and solid fuel burning license must meet the following qualifications:

A. The applicant must demonstrate 4 years of licensed practical experience as an apprentice oil and solid fuel burning technician and a journeyman oil and solid fuel burning technician and evidence that the licensed practical experience for at least 2 of those 4 years was as a licensed journeyman oil and solid fuel burning technician or other requirements the board may establish. Courses approved by the board that apply to a journeyman license cannot be applied toward the requirements for a master license; and [2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF).]

B. The applicant must pass an examination approved by the board. [2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF).]

An out-of-state applicant must present satisfactory evidence to the board of experience in installing, cleaning, servicing, altering and repairing oil and solid fuel burning equipment.

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

SECTION HISTORY
2009, c. 344, Pt. C, §3 (NEW). 2009, c. 344, Pt. E, §2 (AFF).

§18133. JOURNEYMAN OIL AND SOLID FUEL BURNING TECHNICIAN

1. **Scope of license.** A journeyman oil and solid fuel burning technician may install, clean, service, alter or repair oil and solid fuel burning equipment and must hold one or more of the following authorities: number one and number 2 oils up to 15 gallons per hour; number one and number 2 oils over 15 gallons per hour; number 4, number 5 and number 6 oils; number one to number 6 oils; and solid fuel. A journeyman oil and solid fuel burning technician may install oil and solid fuel burning equipment under the indirect supervision of a master oil and solid fuel burning technician who has the same authority or higher and must at all times be under the indirect supervision of, or in the employ of, a master oil and solid fuel burning technician.

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

2. **Professional qualifications.** Each applicant for a journeyman oil and solid fuel burning license must pass an examination approved by the board and must meet one of the following qualifications:

A. One year of licensed practical experience as an apprentice oil and solid fuel burning technician; [2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF).]

B. Six months of licensed practical experience as an apprentice oil and solid fuel burning technician and completion of an oil burner technician course at a community college, career and technical education center or career and technical education region or a comparable institute in the State or another state consisting, at a minimum, of 160 hours of study, of which at least 75 hours are made up of laboratory work on oil burner equipment and related systems; or [2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF).]

C. Successful completion of a minimum one-year accredited heating course at a community college in this State consisting at a minimum of 320 hours of study, of which at least 150 hours are made up of laboratory work on oil burner equipment and related systems. [2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF).]

An out-of-state applicant must present satisfactory evidence to the board of experience in installing, cleaning, servicing, altering and repairing oil and solid fuel burning equipment.

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

SECTION HISTORY
2009, c. 344, Pt. C, §3 (NEW). 2009, c. 344, Pt. E, §2 (AFF).

§18134. APPRENTICE OIL AND SOLID FUEL BURNING TECHNICIAN

1. **Scope of license.** An apprentice oil and solid fuel burning technician may:

A. Assist in making oil and solid fuel installations and repairing and servicing of oil and solid fuel burning equipment under the direct supervision of a master or journeyman oil and solid fuel burning technician who holds the same or higher authority. License authorities include: number one and number 2 oils up to 15 gallons per hour; number one and number 2 oils over 15 gallons per hour; number 4, number 5 and number 6 oils; number one to number 6 oils; and solid fuel; [2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF).]

B. Clean oil and solid fuel burning equipment without direct supervision if the licensee has either successfully completed at least 160 hours of training approved by the board or completed at least one year of supervised oil and solid fuel burning work experience; and [2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF).]

C. Bleed an oil burner without direct supervision. If the oil burner fails to operate after bleeding, the apprentice shall refer the problem to a journeyman oil and solid fuel burning technician or master oil and solid fuel burning technician. [2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF).]

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

SECTION HISTORY
2009, c. 344, Pt. C, §3 (NEW). 2009, c. 344, Pt. E, §2 (AFF).

§18135. PROPANE AND NATURAL GAS TECHNICIAN

1. **Scope of license.** A propane and natural gas technician may install, repair or service propane or natural gas equipment and must be authorized in one of the following authorities:

A. Appliance connection and service, which permits the technician to install and service propane and natural gas appliances up to 500,000 BTUs per appliance; [2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF).]

B. Delivery, which permits the technician to deliver propane, either by liquid transfer into a stationary container on the property of the consumer or by placing a portable container on the property of the consumer; [2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF).]

C. Large equipment connection and service, which permits the technician to install and service propane and natural gas appliances over 500,000 BTUs per appliance; [2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF).]

D. Plant operation, which permits the technician to work at a propane facility as defined in NFPA standards, Number 58; or [2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF).]

E. Tank setting and outside piping, which permits the technician to set and maintain propane tanks and outside piping. [2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF).]

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

2. **Professional qualifications.** Each applicant for a propane and natural gas technician license must meet one of the following qualifications:

A. Successful completion of the certified employee training program of a national propane gas association; or [2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF).]

B. Successful completion of a board-approved propane or natural gas course at a Maine community college, career and technical education center or career and technical education region or a comparable institute of this State or another state and passage of an examination approved by the board. [2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF).]

An out-of-state applicant must present satisfactory evidence to the board of experience in installing, cleaning, servicing, altering and repairing propane and natural gas burning equipment.

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

SECTION HISTORY
2009, c. 344, Pt. C, §3 (NEW). 2009, c. 344, Pt. E, §2 (AFF).

§18136. PROPANE AND NATURAL GAS HELPER

A propane and natural gas helper may assist in making propane and natural gas installations and repairing and servicing of propane and natural gas equipment under the direct supervision of a propane and natural gas technician who has the same authority as described under section 18135, subsection 1 as the supervising propane and natural gas technician. [2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF).]

SECTION HISTORY
2009, c. 344, Pt. C, §3 (NEW). 2009, c. 344, Pt. E, §2 (AFF).

§18137. TEMPORARY LICENSE; PLANT OPERATOR OR DELIVERY TECHNICIAN

1. **Scope of license.** A temporary license may be issued to a plant operator or delivery technician to practice as follows:

A. Authority to practice as a plant operator is restricted to work at a propane facility as defined in NFPA standards, Number 58; and [2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF).]

B. Authority to practice as a delivery technician is restricted to the delivery of propane, either by liquid transfer into a stationary container on the property of a consumer or by placing a portable container on the property of a consumer. [2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF).]

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

2. **License term.** An applicant for a temporary plant operator or delivery technician license must apply for a temporary plant operator or delivery technician license within 90 days after first performing the functions listed in subsection 1 and may be issued a license for a 1-year term, which may not be renewed. A new temporary plant operator or delivery technician license may not be issued within 3 years following the date of issuance of the previous temporary plant operator or delivery technician license.

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

SECTION HISTORY
2009, c. 344, Pt. C, §3 (NEW). 2009, c. 344, Pt. E, §2 (AFF).

§18138. LIMITED OIL ENERGY AUDITOR

1. **Scope of license.** A limited oil energy auditor's privileges to practice are restricted to the performance of combustion safety and efficiency testing on oil-fired space-heating equipment or water-heating equipment to ensure health and safety standards and do not include any adjustment of oil-fired space-heating equipment or water-heating equipment.

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

2. **Professional qualifications.** A limited oil energy auditor must provide to the board, at a minimum, satisfactory evidence of relevant training and written and field certification that conform to standards established by a nationally recognized building performance industry certification and quality assurance program, the equivalent residential energy auditor certification program in the State or an equivalent training and education program as determined by the board.

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

SECTION HISTORY
2009, c. 344, Pt. C, §3 (NEW). 2009, c. 344, Pt. E, §2 (AFF).

§18139. LIMITED PROPANE AND NATURAL GAS ENERGY AUDITOR

1. **Scope of license.** A limited propane energy auditor's privileges are restricted to the performance of combustion safety and efficiency testing on natural gas-fired or propane gas-fired space-heating equipment or water-heating equipment to ensure health and safety standards and do not include any adjustment of natural or propane gas-fired space-heating equipment or water-heating equipment.

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

2. **Professional qualifications.** A limited propane energy auditor must provide to the board, at a minimum, satisfactory evidence of relevant training and written and field certification that conform to standards established by a nationally recognized building performance industry certification and quality assurance program, the equivalent residential energy auditor certification program in the State or an equivalent training and education program as determined by the board.

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

SECTION HISTORY
2009, c. 344, Pt. C, §3 (NEW). 2009, c. 344, Pt. E, §2 (AFF).

§18140. LIMITED TANK INSTALLER

1. **Scope of license.** A limited tank installer’s privileges to practice are restricted to installing outside residential heating oil tanks at manufactured housing as defined by Title 10, section 9002, subsection 7, paragraph A.

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

2. **Issuance of license.** The following provisions govern the issuance of a limited tank installer's license.

A. A limited tank installer’s license may be issued to:

(1) A licensed manufactured housing mechanic as defined in Title 10, section 9002; or

(2) The owner of a manufactured housing dealership for the limited purpose of installing heating oil tanks at manufactured housing that has been sold by the owner. The license is revoked upon the owner ceasing to operate as a manufactured housing dealer. [2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF).]

B. A limited tank installer’s license may be issued jointly to a licensed manufactured housing dealer, as defined in Title 10, section 9002, and an individual employee of the dealer who is named as the corecipient of the joint limited tank installer's license. The corecipient dealer and employee are restricted to installing heating oil tanks at manufactured housing that was sold by the dealer. The joint limited

tank installer's license is revoked upon termination of the employee named as the corecipient of the joint limited tank installer's license from the employ of the dealer. [2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF).]

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

3. **Professional qualifications.** A limited tank installer must provide satisfactory evidence to the board of completion of a board-approved training program of at least 4 hours for proper installation of an outside oil tank.

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

SECTION HISTORY
2009, c. 344, Pt. C, §3 (NEW). 2009, c. 344, Pt. E, §2 (AFF).

§18141. LIMITED WOOD PELLET TECHNICIAN

A limited wood pellet technician's privileges to practice are restricted to cleaning the ash pan, cleaning the burn pot, scraping and cleaning the distribution tubes, emptying fines from the collection box and cleaning the fan. [2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF).]

SECTION HISTORY
2009, c. 344, Pt. C, §3 (NEW). 2009, c. 344, Pt. E, §2 (AFF).

§18142. LICENSURE; INSTALLATION AND MAINTENANCE STANDARDS; DISPENSING STATIONS

The following licensing, maintenance and installation standards apply to dispensing stations operating in the State. [2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF).]

1. **License required.** An application for licensure of a dispensing station or self-service dispensing station must be made by the owner and, if approved by the board, the license must be issued in the name of the owner.

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

2. **Responsibilities.** The owner of a dispensing station or self-serving dispensing station is responsible for the following.

A. A dispensing station operating in the State must comply with section 18107 and the standards and rules adopted by the board, including, but not limited to, NFPA standards, Numbers 54 and 58, and amendments to and replacements of those standards. [2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF).]

B. The on-site operator of a dispensing station must be trained to be the limited operator of the facility. The limited operator is responsible for training other dispensing station employees and documenting that training. The training must include the use of a manual prepared by a regional propane gas association, a video prepared by a national propane gas association or equivalent materials approved by the board. The training documentation must be kept at the dispensing station. [2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF).]

C. The owner of a dispensing station must file a new application for licensure with the board within 30 days when:

(1) A dispensing station is relocated; or

(2) A dispensing station undergoes major repair or renovation. [2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF).]

[2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF) .]

SECTION HISTORY
2009, c. 344, Pt. C, §3 (NEW). 2009, c. 344, Pt. E, §2 (AFF).

§18143. FEES

The Director of the Office of Professional and Occupational Regulation within the Department of Professional and Financial Regulation may establish by rule fees for purposes authorized under this subchapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for any one purpose may not exceed $350 biennially. Rules adopted pursuant to this section are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A. [2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF); 2011, c. 286, Pt. B, §5 (REV).]

SECTION HISTORY
2009, c. 344, Pt. C, §3 (NEW). 2009, c. 344, Pt. E, §2 (AFF). 2011, c. 286, Pt. B, §5 (REV).

§18144. RENEWALS

A license expires on the date set by the Commissioner of Professional and Financial Regulation pursuant to Title 10, section 8003, subsection 4 for the licensing period for which the license was issued. A renewal license may be issued for each ensuing licensing period in the absence of any reason or condition that might warrant the refusal to grant a license upon receipt by the board of the written request of the applicant and the fee for the license set under section 18143. An expired license may be reissued up to 90 days after the date of expiration upon payment of a late fee in addition to the renewal fee as set under section 18143. An individual who submits an application for renewal more than 90 days after the license expiration date is subject to all requirements governing new applicants under this chapter and is subject to a renewal fee, late fee and additional late fee as set under section 18143, except that the board may, in its discretion and giving due consideration to the protection of the public, waive examination if that renewal application is made within 2 years from the date of that expiration. [2009, c. 344, Pt. C, §3 (NEW); 2009, c. 344, Pt. E, §2 (AFF).]

SECTION HISTORY
2009, c. 344, Pt. C, §3 (NEW). 2009, c. 344, Pt. E, §2 (AFF).

Chapter 141: PROFESSIONAL LAND SURVEYORS

Subchapter 1: GENERAL PROVISIONS

§18201. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF).]

1. **Board.** "Board" means the Board of Licensure for Professional Land Surveyors.

[2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF) .]

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

[2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF) .]

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

[2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF) .]

4. **Land surveying.** "Land surveying" means any service or work involving the application of special knowledge of the rules of evidence and boundary laws, principles of mathematics and the related physical and applied sciences for measuring and locating lines, angles, elevations and natural and man-made features in the air, on the surface of the earth, within underground workings and on the beds of bodies of water. This service or work is for the purposes of determining areas and volumes, for the monumenting of property boundaries and for the platting and layout of lands and subdivisions of land, including topography, alignment and grades of streets and for the preparation and perpetuation of maps, record plats, field note records and property descriptions that represent these surveys.

A person practices or offers to practice land surveying within the meaning and intent of this chapter if that person engages in land surveying or by verbal claim, sign, advertisement, letterhead, card or in any other way makes a representation that the person is a professional land surveyor or makes a representation that the person is able to perform or does perform any land surveying service or work or any other service designated by the practitioner that is recognized as land surveying.

[2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF) .]

5. **Land surveyor-in-training.** "Land surveyor-in-training" means a person licensed under this chapter to practice land surveying under the responsible charge of a professional land surveyor.

[2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF) .]

6. **Person.** "Person" means an individual.

[2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF) .]

7. **Professional land surveyor.** "Professional land surveyor" means a person licensed under this chapter to practice land surveying.

[2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF) .]

8. **Responsible charge.** "Responsible charge" means direct control and personal supervision of land surveying.

[2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF) .]

SECTION HISTORY
2013, c. 180, §5 (NEW). 2013, c. 180, §6 (AFF).

§18202. LICENSE REQUIRED

Except as provided in section 18203, it is unlawful for a person to practice land surveying or advertise or offer to practice land surveying without a license issued under this chapter. [2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF).]

SECTION HISTORY
2013, c. 180, §5 (NEW). 2013, c. 180, §6 (AFF).

§18203. EXEMPTIONS

This chapter may not be construed to prevent the practice by: [2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF).]

1. **Other professions.** A person licensed in this State under any other provision of law from engaging in the practice for which the person is licensed;

[2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF) .]

2. **Federal Government employees.** An officer or employee of the Federal Government while engaged within this State in the practice of land surveying for the Federal Government;

[2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF) .]

3. **Interstate commerce corporation employees.** An officer or employee of a corporation engaged in interstate commerce as defined in the Act of Congress entitled "An Act to Regulate Commerce" approved February 4, 1887, as amended, or in interstate communication as defined in the Act of Congress entitled "Communications Act of 1934" approved June 9, 1934, while working solely as an employee of that corporation, as long as an officer or employee of that corporation customarily in responsible charge of the surveying work of that corporation within this State is licensed under this chapter; or

[2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF) .]

4. **Unlicensed person.** A person working under the responsible charge of a professional land surveyor.

[2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF) .]

SECTION HISTORY
2013, c. 180, §5 (NEW). 2013, c. 180, §6 (AFF).

§18204. PENALTIES

1. **Unlicensed practice.** A person who violates section 18202 is subject to the provisions of Title 10, section 8003-C.

[2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF) .]

SECTION HISTORY
2013, c. 180, §5 (NEW). 2013, c. 180, §6 (AFF).

§18205. CIVIL ACTIONS

A person or entity may not bring or maintain any action in the courts of the State for the collection of compensation for land surveying services without first proving that the person performing the land surveying was properly licensed by the board at the time the cause of action arose. [2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF).]

SECTION HISTORY
2013, c. 180, §5 (NEW). 2013, c. 180, §6 (AFF).

Subchapter 2: BOARD OF LICENSURE FOR PROFESSIONAL LAND SURVEYORS

§18211. BOARD OF LICENSURE FOR PROFESSIONAL LAND SURVEYORS

1. **Establishment.** The Board of Licensure for Professional Land Surveyors is established within the department pursuant to Title 5, section 12004-A, subsection 21 to carry out the purposes of this chapter.

[2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF) .]

2. **Members.** The board consists of 7 members appointed by the Governor. Each member must be a resident of this State. The board consists of:

A. Two public members as defined in Title 5, section 12004-A; and [2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF).]

B. Five members who hold valid professional land surveyor licenses and have been licensed as professional land surveyors for at least 10 years immediately prior to appointment to the board. [2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF).]

[2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF) .]

3. **Terms; removal.** Terms of the members of the board are for 5 years. Appointments of members must comply with Title 10, section 8009. Members may be removed by the Governor for cause.

[2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF) .]

4. **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. Four members of the board constitute a quorum.

[2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF) .]

SECTION HISTORY
2013, c. 180, §5 (NEW). 2013, c. 180, §6 (AFF).

§18212. RULES

The board may establish guidelines and rules by which this chapter is administered, including adopting a code of conduct and standards of practice. Except where otherwise indicated, rules adopted pursuant to this chapter are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF).]

SECTION HISTORY
2013, c. 180, §5 (NEW). 2013, c. 180, §6 (AFF).

§18213. DUTIES AND POWERS

The board shall administer and enforce this chapter and evaluate the qualifications of applicants for licensure. [2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF).]

SECTION HISTORY
2013, c. 180, §5 (NEW). 2013, c. 180, §6 (AFF).

§18214. DENIAL OR REFUSAL TO RENEW LICENSE; DISCIPLINARY ACTION

In addition to the grounds enumerated in Title 10, section 8003, subsection 5-A, paragraph A, the board may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A for suspension or revocation in any state of a professional or occupational license, certification or registration for disciplinary reasons or rejection of any application for reasons related to untrustworthiness. [2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF).]

SECTION HISTORY
2013, c. 180, §5 (NEW). 2013, c. 180, §6 (AFF).

Subchapter 3: LICENSURE; SCOPE; ADMINISTRATION

§18221. GENERAL QUALIFICATIONS

An applicant for licensure under this chapter: [2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF).]

1. **Application.** Shall submit an application to the board together with the fee as set under section 18229; and

[2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF) .]

2. **Age.** Must be at least 18 years of age at the time of application.

[2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF) .]

SECTION HISTORY
2013, c. 180, §5 (NEW). 2013, c. 180, §6 (AFF).

§18222. LICENSE LIMITED TO PERSONS

Only a person may be licensed under this chapter. A firm, company, partnership, limited liability company or corporation may practice or offer to practice land surveying as long as the practice of land surveying is performed by a professional land surveyor licensed in this State. [2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF).]

SECTION HISTORY

2013, c. 180, §5 (NEW). 2013, c. 180, §6 (AFF).

§18223. LAND SURVEYOR-IN-TRAINING

1. **Scope of practice.** A land surveyor-in-training license entitles the holder to perform land surveying services under the responsible charge of a professional land surveyor.

[2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF) .]

2. **Professional qualifications.** Each applicant for a land surveyor-in-training license must pass an examination approved by the board and meet one of the following qualifications:

A. Hold a bachelor's degree or higher from a program that includes a minimum surveying core curriculum approved by the board; [2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF).]

B. Hold an associate's degree from a program that includes a minimum surveying core curriculum approved by the board and demonstrate 2 years of surveying experience acceptable to the board; [2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF).]

C. Successfully complete a minimum surveying core curriculum approved by the board and demonstrate 6 years of surveying experience acceptable to the board; or [2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF).]

D. Demonstrate 7 years of surveying experience acceptable to the board. [2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF).]

[2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF) .]

SECTION HISTORY
2013, c. 180, §5 (NEW). 2013, c. 180, §6 (AFF).

§18224. PROFESSIONAL LAND SURVEYOR

1. **Scope of practice.** A professional land surveyor license entitles the holder to perform land surveying services.

[2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF) .]

2. **Professional qualifications.** An applicant for a professional land surveyor license must:

A. Be a land surveyor-in-training in this State or hold a license from another jurisdiction with qualifications similar to those required for a land surveyor-in-training under section 18223, and have a specific record of 2 additional years of progressive combined office and field experience acceptable to the board; and [2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF).]

B. Successfully pass an examination approved by the board. [2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF).]

[2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF) .]

SECTION HISTORY
2013, c. 180, §5 (NEW). 2013, c. 180, §6 (AFF).

§18225. CONTINUING EDUCATION REQUIRED FOR PROFESSIONAL LAND SURVEYORS

As a prerequisite to renewal of a professional land surveyor license, the applicant must complete continuing education as set forth by rules adopted by the board. [2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF).]

SECTION HISTORY
2013, c. 180, §5 (NEW). 2013, c. 180, §6 (AFF).

§18226. SEALS; STAMPS

1. **Seal; design; final documents; alteration; official notice.** A professional land surveyor shall obtain a seal of the design authorized by the board by rule.

A. All final documents, including plans, descriptions, reports, maps, plats or other drawings must be signed and sealed by the issuing professional land surveyor, as prescribed in the rules of the board. [2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF).]

B. If an item bearing the seal of a professional land surveyor is altered, the altering professional land surveyor's seal and signature must be affixed with the notation "altered by," the date and a specific description of the alteration. [2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF).]

C. An official of this State, or of any city, county, town or village in the State, charged with the enforcement of laws, rules, ordinances or regulations may not accept or approve any plans or other documents prepared within the meaning and intent of this chapter that are not sealed and signed by the professional land surveyor under whose responsible charge they were completed. [2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF).]

[2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF) .]

SECTION HISTORY
2013, c. 180, §5 (NEW). 2013, c. 180, §6 (AFF).

§18227. APPLICANTS LICENSED IN ANOTHER JURISDICTION

An applicant who is licensed, in good standing, under the laws of another jurisdiction may qualify for licensure under this chapter by submitting evidence satisfactory to the board that the applicant has met all of the qualifications for licensure equivalent to those set forth by this chapter for that level of licensure. The applicant may be required to take examinations as the board determines necessary to determine the applicant's qualifications. [2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF).]

SECTION HISTORY
2013, c. 180, §5 (NEW). 2013, c. 180, §6 (AFF).

§18228. RENEWAL

A license expires on the date set by the commissioner pursuant to Title 10, section 8003, subsection 4 for the licensing period for which the license was issued. A renewal license is issued for each ensuing licensing period in the absence of any reason or condition that might warrant the refusal to grant a license, upon receipt by the board of the written request of the applicant and the fee for the license as set under section 18229 and upon the applicant's presenting evidence of compliance with the requirements of section 18225. [2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF).]

Licenses may be renewed up to 90 days after the date of expiration upon payment of a late fee as set under section 18229 in addition to the renewal fee as set under section 18229. A person who submits an application for renewal more than 90 days after the licensure renewal date is subject to all requirements

governing new applicants under this chapter, including a late fee, renewal fee and additional late fee as set under section 18229, except that the board may waive examination, giving due consideration to the protection of the public. [2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF).]

SECTION HISTORY
2013, c. 180, §5 (NEW). 2013, c. 180, §6 (AFF).

§18229. FEES

The Director of the Office of Professional and Occupational Regulation within the Department of Professional and Financial Regulation may establish by rule fees for purposes authorized under this chapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for any one purpose may not exceed $350. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF).]

SECTION HISTORY
2013, c. 180, §5 (NEW). 2013, c. 180, §6 (AFF).

Subchapter 4: RIGHT OF ENTRY

§18231. RIGHT OF ENTRY FOR PROFESSIONAL LAND SURVEYOR PERFORMING LAND SURVEYING SERVICES

When performing land surveying services at the request of a landowner or person with an interest in real estate, a professional land surveyor and the surveyor's assistant may, without the consent of the owner or person in possession, enter upon or cross any lands necessary to perform land surveying services. [2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF).]

1. **No authority to intentionally damage or move object.** Nothing in this section may be construed as giving authority or license to a professional land surveyor or the surveyor's assistant to intentionally destroy, injure, damage or move any object, chattel or item on the lands of another without the permission of the owner.

[2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF) .]

2. **Civil liability for actual damage.** This section may not be construed to remove civil liability for actual damage to land, chattel, crops or personal property.

[2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF) .]

3. **No authority to enter building used as residence or for storage.** This section may not be construed to give a professional land surveyor or the surveyor's assistant the authority to enter any building or structure used as a residence or for storage.

[2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF) .]

4. **Reasonable effort to notify landowners.** A professional land surveyor shall make reasonable effort to notify a landowner upon whose land it is necessary for the professional land surveyor to enter or cross. Notice provided as follows meets the requirement of this subsection:

A. Written notice delivered by hand to the landowner or to the residence of the landowner upon whose land the surveyor may enter or cross, delivered at least 24 hours prior to the surveyor's entering the land; or [2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF).]

B. Written notice mailed by first class mail to the landowner upon whose land the surveyor may enter or cross, postmarked at least 5 days prior to the surveyor's entering the land. The surveyor may rely on the address of the landowner as contained in the municipal property tax records or their equivalent. [2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF).]

[2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF) .]

5. **Owner or occupant of land; duty of care; liability.** The duty of care an owner or occupant of land owes to the professional land surveyor and the surveyor's assistant is the same as that owed a trespasser.

[2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF) .]

6. **Professional land surveyor and assistant identification.** A professional land surveyor and the surveyor's assistant shall carry means of proper identification as to their licensure or employment and shall display this identification to anyone requesting identification.

[2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF) .]

7. **Compliance with safety regulations.** A professional land surveyor and the surveyor's assistant shall comply with all federal and state safety rules and regulations that apply to the land that they enter or cross pursuant to this section.

[2013, c. 180, §5 (NEW); 2013, c. 180, §6 (AFF) .]

SECTION HISTORY
2013, c. 180, §5 (NEW). 2013, c. 180, §6 (AFF).

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