

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND THIRTEENTH LEGISLATURE
FIRST REGULAR SESSION
December 3, 1986 to June 30, 1987
Chapters 1-542

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

Twin City Printery
Lewiston, Maine
1987

PUBLIC LAWS

OF THE

STATE OF MAINE

AS PASSED AT THE
FIRST REGULAR SESSION
of the
ONE HUNDRED AND THIRTEENTH LEGISLATURE
1987

2. Mental incompetency. A legal finding of mental incompetency;

3. Aiding and abetting misrepresentation. Aiding or abetting a person, not duly licensed under this chapter, in representing himself as an acupuncturist;

4. Unprofessional conduct or negligency. Any gross negligence, incompetency or misconduct in the performance of acupuncture;

5. Criminal conviction. Subject to the limitations of Title 5, chapter 341, conviction of a Class A, Class B or Class C crime or of a crime which, if committed in this State, would be punishable by one year or more of imprisonment; or

6. Good cause. Any other good cause, relevant to qualifications to practice.

Sec. 4. Allocation. The following funds are allocated from Other Special Revenue Funds to carry out the purposes of this Act.

	<u>1987-88</u>	<u>1988-89</u>
<u>PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF</u>		
<u>Acupuncture Licensing Board</u>		
All Other	\$3,000	\$2,000
Effective September 29, 1987.		

CHAPTER 489

H.P. 644 — L.D. 867

AN ACT to Regulate the Profession of Accounting.

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

Sec. 1. 32 MRSA c. 58, as amended, is repealed.

Sec. 2. 32 MRSA c. 113 is enacted to read:

CHAPTER 113

PRACTICE OF PUBLIC ACCOUNTANCY

SUBCHAPTER I

GENERAL PROVISIONS

§12201. Definitions

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

1. Board. "Board" means the Board of Accountancy established under Title 5, section 12004, subsection 1, or its predecessor under prior law.

2. Certificate. "Certificate" means a certificate as "certified public accountant" issued under section 12227 or corresponding provisions of prior law, and a certificate as "public accountant" issued under section 12239 or corresponding provisions of prior law, or a corresponding certificate as a certified public accountant issued after examination under the law of any other state.

3. Commissioner. "Commissioner" means the Commissioner of Professional and Financial Regulation.

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

5. Firm. "Firm" means a sole proprietorship, a corporation or a partnership.

6. Licensee. "Licensee" means a person who holds a valid permit issued by the board under section 12251, or a firm which holds a valid permit issued by the board under section 12252.

7. Permit. "Permit" means a permit as granted by the board to practice public accountancy as provided under sections 12251 and 12252.

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

B. Performing or offering to perform, for a client or potential client, services involving the use of accounting or auditing skills.

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.

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.

10. Report on financial statements. "Report on financial statements" means any form of language which:

A. States or implies assurance as to the reliability of any financial statements; and

B. States or implies that an audit, review or compilation has been performed.

Report on financial statements includes disclaimers of opinions when the disclaimer implies positive assurance as to the reliability of the financial statements. Language which 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 as adopted by the board by rule or that the person has the capabilities to comply with those standards.

11. Rule. "Rule" means any rule or other written directive of general application duly adopted by the board.

§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:

1. Represent or appear to represent that he is a licensee as defined in section 12201, subsection 6; or

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.

SUBCHAPTER II

BOARD OF ACCOUNTANCY

§12213. Appointment

The Board of Accountancy, as established by Title 5, section 12004, subsection 1, shall be within the Department of Professional and Financial Regulation. The board shall consist of 5 members appointed by the Governor. Each member of the board shall be a citizen of the United States and a resident of this State. Three members shall be holders of certificates issued under section 12252 and of currently valid permits issued under section 12251 and shall have had, as their principal occupation, active practice as certified public accountants for at least the 5 preceding years. One member shall hold a certificate issued under section 12273, currently valid permit issued under section 12251 and shall have had, as his principal occupation, active practice as a noncertified public accountant for at least the 5 preceding years. One member of the board shall be a representative of the public. Appointments shall be for 3-year terms and the term of one member, other than the member registered under section 12273 and the public member's term, shall expire each calendar year and appointments of less than 3 years may be made in order to comply with this limitation. Any vacancy occurring during a term

shall be filled by appointment for the unexpired term. Upon the expiration of his term of office, a member shall continue to serve until his successor has been appointed and has qualified and the successor's term shall be 3 years from the date of the expiration, regardless of the date of his appointment. No person may be eligible to serve more than 3 full consecutive terms provided that, for this purpose only, a period actually served which exceeds 1/2 of the 3-year term shall be deemed a full term. The Governor shall remove any member of the board for cause.

§12214. Organization; powers and duties

1. Organization. The board shall elect annually from among its members a chairman and a secretary who shall be a certified public accountant. The board shall meet at such times and places as may be fixed by the board or at the call of the chairman or a majority of the board members. Three members of the board shall constitute a quorum for the transaction of business, provided that at least one of the 3 members present is the public member or the member who is registered under section 12273. The board may have a seal. The board shall retain or arrange for the retention of all applications and all documents under oath that are filed with the board and also records of its proceedings and it shall maintain a registry of the names and addresses of all licensees under this chapter. In any proceeding in court, civil or criminal, arising out of or founded upon any provisions of this chapter, copies of any of the records certified as true copies under the seal of the board shall be admissible in evidence as tending to prove the contents of those records.

2. Compensation. Each member of the board shall be compensated according to Title 5, chapter 379.

3. Receipts and expenses. Money received are to be used for the expenses of administering the provisions of this chapter, which may include, but shall not be limited to, the costs of conducting investigations and of taking testimony and procuring the attendance of witnesses before the board or its committees; all legal proceedings taken under this chapter for the enforcement of this chapter; and education programs for the benefit of the public and licensees and their employees.

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.

5. 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 shall be located in the department and under the

administrative and supervisory direction of the commissioner.

6. Register. The department will make available, at cost, a register which shall contain the names of all individuals licensed by the board.

7. 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 deemed necessary for 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.

8. Contracts. The board may enter into contracts to carry out its responsibilities under this chapter.

9. Fees. The board may establish application and examination fees in amounts which are reasonable and necessary for their respective purposes. All those fees shall accompany the applications. Application fees are nonrefundable. Examination fees shall not be returned to an applicant should he fail to pass an examination.

10. Budget. The board shall submit to the commissioner its budgetary requirements in the same manner as is provided in Title 5, section 1665.

11. Reports. No later than August 1st of each year, the board shall submit to the commissioner, for the preceding fiscal year, its annual report of operations, together with those comments and recommendations as the commissioner deems essential.

SUBCHAPTER III

REGISTRATION OF CERTIFIED PUBLIC ACCOUNTANTS

§12227. Certificate

Any person who shall have received from the board a certificate of his qualifications to practice as a certified public accountant, prior to the effective date of this chapter or as provided in section 12228, shall 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.

§12228. Certified public accountants

1. Certificate grant. The board shall grant the certificate of "certified public accountant" to any person who makes application to the board and who meets the good character, education, examination and experience requirements of, and who pays the fees prescribed by, this section.

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 .

3. Education requirement. The education requirement for a certificate, which must be met no later than 120 days after an applicant sits for the examination prescribed in subsection 4, shall be a baccalaureate degree or its equivalent conferred by a college or university acceptable to the board.

4. Examination; administration. The examination to be passed as a condition for the granting of a certificate shall be in writing, shall be held twice a year and shall be the Uniform Certified Public Accountant Examination prepared by the Board of Examiners of the American Institute of Certified Public Accountants. The time for holding the examination shall be fixed by the board and may be changed from time to time. The board shall prescribe by rule the methods of applying for and conducting the examination, including methods for grading papers and determining a passing grade required of an applicant for a certificate, provided that the board, to the extent possible, shall see to it that the grading of the examination and the passing grades are uniform with those applicable in all other states. The board may make the use of all or any part of the Advisory Grading Service of the American Institute of Certified Public Accountants 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.

5. Examination; passing. An applicant shall be required to pass all parts of the examination provided for in subsection 4, in order to qualify for a certificate. If, at a given sitting of the examination, an applicant passes 2 or more, but not all, parts with the accounting practice part of the examination being treated for this purpose as 2 parts, then the applicant shall be given credit for those parts that he has passed and need not sit for reexamination in those parts, provided that:

A. The applicant wrote all parts of the examination at that sitting;

B. The applicant passes the remaining parts of the examination within 6 consecutive examinations given after the one at which the first parts were passed; and

C. At each subsequent sitting at which the applicant seeks to pass any additional parts, the applicant writes all parts not yet passed.

6. Examination; credits. An applicant shall 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.

7. Waiver. The board may, in particular cases, waive or defer any of the requirements of subsections 5 and 6 regarding the circumstances in which the various parts of the examination must be passed upon a showing that, by reason of circumstances beyond the applicant's control, he was unable to meet that requirement.

8. Administration fee. The board may charge, or provide for a 3rd party administering the examination to charge, each applicant a fee in an amount prescribed by the board by rule for each part of the examination or reexamination taken by the applicant.

9. Fee; out-of-state examination. The board may charge a fee in an amount prescribed by the board by rule for granting of the certificate of "certified public accountant" to any applicant who has been given credit for any or all parts of an examination passed in another state as provided in section 12228, subsection 6.

10. Experience. The applicant shall show that he has had 2 years of experience in the practice of public accountancy or its equivalent, meeting requirements prescribed by the board by rule; or, if the applicant's educational qualifications comprise a baccalaureate degree meeting the requirements set out in section 12228, subsection 3, and a master's degree conferred by a college or university approved by the board and one year of experience, then only one year of experience in that practice or its equivalent is required. To the extent the applicant's experience is as an auditor engaged in the examination of financial statements for the Department of Audit or as a revenue agent or similar position engaged in the examination of personal and corporate income tax returns for the Bureau of Taxation, the applicant shall receive credit at the rate of 50% toward the experience required by this subsection.

11. Board discretion. The members of the board have the full and sole responsibility for the determination of the qualifications of applicants for the certificate of "certified public accountant." Only persons recommended by the board shall be granted the certificate of "certified public accountant."

SUBCHAPTER IV

REGISTRATION OF PUBLIC ACCOUNTANTS

§12239. Certificate

Any person who receives from the board a certificate of his qualifications to practice as public accountant, prior to the effective date of this chapter or as provided in section 12240, shall 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.

§12240. Public Accountants

1. Certificate grants. The board shall grant the certificate of "public accountant" to any person who makes application to the board and who meets the good character, education, examination and experience requirements of, and who pays the fees prescribed by, subsections 2 to 8.

2. Good character. "Good character" for 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 pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375.

3. Education requirement. The education requirement for a certificate, which shall be met no later than 120 days after an applicant sits for the examination prescribed in subsection 4, shall be a baccalaureate degree or its equivalent conferred by a college or university acceptable to the board.

4. Examination; administration. The examination to be passed as a condition for the granting of a certificate shall be in writing, held twice a year, and include Parts I and II of the "Examination in Accounting Practice" portion of the Uniform Certified Public Accountant Examination prepared by the Board of Examiners of the American Institute of Certified Public Accountants and shall also include other applicable subjects in the field of accounting, such as auditing, theory of accounts, practical accounting problems, commercial law as it affects accountancy, federal and state taxation and such other subjects pertinent to accounting as the board may specify by rule. The examination may include all or part of the examination of the National Society of Public Accountants. The time for holding that examination shall be fixed by the board and may be changed from time to time. The board shall prescribe by rule the methods of applying for and conducting the examination, including methods for grading papers and determining a passing grade required of an applicant for a certificate, provid-

ed that the board, to the extent possible, shall see to it that the grading of the examination and the passing grades are uniform with those applicable in all other states. The board may contract with 3rd parties to perform those administrative services with respect to the examination as it considers appropriate to assist it in performing its duties under this section.

5. Examination; passing. An applicant shall be required to pass all parts of the examination provided in subsection 4, in order to qualify for a certificate. If, at a given sitting of the examination, an applicant passes 2 or more, but not all parts, with the accounting practice part of the examination being treated for this purpose as 2 parts, then the applicant shall be given credit for those parts that he has passed and need not sit for reexamination in those parts, provided that the applicant passes the remaining parts of the examination within 6 consecutive examinations given after the one at which the first parts were passed.

6. Administrative fee. The board may charge, or provide for a 3rd party administering the examination to charge, each applicant a fee in an amount prescribed by the board by rule for each part of the examination or reexamination taken by the applicant.

7. Experience. The applicant shall show that he has had 2 years of experience in the practice of public accountancy or its equivalent, meeting requirements prescribed by the board by rule; or, if the applicant's educational qualifications comprise a baccalaureate degree meeting the requirements set out in subsection 3 and a master's degree conferred by a college or university approved by the board and one year of experience, then only one year of experience in that practice or its equivalent is required. To the extent the applicant's experience is as an auditor engaged in the examination of financial statements for the Department of Audit or as a revenue agent or similar position engaged in the examination of personal and corporate income tax returns for the Bureau of Taxation, the applicant shall receive credit at the rate of 50% toward the experience required by this subsection.

8. Board discretion. The noncertified member or members of the board shall have the full and sole responsibility for the determination of the qualifications of applicants for the certificate of "public accountant." Only persons recommended by them to the board shall be granted the certificate of "public accountant."

§12241. Reciprocity

The noncertified member or members of the board may, in their discretion, waive the examination and upon payment of a fee not to exceed \$50, issue a certificate of public accountant under section 12240 to any person who is the holder of a similar certificate or license issued under the laws of another state or foreign government, which is then in full force and effect, provided that the requirements in the state or foreign government which

has granted the certificate or license to the applicant are, in the opinion of the noncertified member or members of the board, equivalent to those of this State.

SUBCHAPTER V

PERMITS TO PRACTICE

§12251. Permits to practice; individual

1. Permits to practice. The board shall grant or renew permits to practice public accountancy to persons who make application and demonstrate their qualifications in accordance with this section.

2. Duration. Permits shall be initially issued and renewed for a period of one year, but in any event shall expire on the June 30th following issuance or renewal.

Applications for those permits shall be made in that form, and in the case of applications for renewal, between such dates, as the board shall by rule specify, and the board shall grant or deny any such application no later than 60 days after the application is filed in proper form. In any case where the applicant seeks the opportunity to show that issuance or renewal of a permit was mistakenly denied or where the board is not able to determine whether it should be granted or denied the board may issue to the applicant a provisional permit, which shall expire 90 days after its issuance or when the board determines whether or not to issue or renew the permit for which application was made, whichever shall first occur.

3. Requirements. An applicant for initial issuance of a permit under this section shall show:

A. That he holds a valid certificate; and

B. If the applicant's certificate was issued more than 4 years prior to his application for issuance of an initial permit under this section, that he has fulfilled the requirements of continuing professional education applicable under subsection 5 if he had secured his initial permit within 4 years of issuance of his certificate and was now applying under subsection 5 for renewal of that permit.

4. Out-of-state certificates. The board shall issue a permit to a holder of a certificate issued by another state upon showing that:

A. The applicant passed the examination required for issuance of his certificate with grades that would have been passing grades at the time in this State;

B. The applicant:

(1) Meets all current requirements in this State for issuance of a certificate at the time the application is made;

(2) At the time of the issuance of the applicant's certificate in the other state, met all the requirements then applicable in this State; or

(3) Had 4 years of experience in the practice of public accountancy or equivalent meeting requirements prescribed by the board by rule, after passing the examination upon which his certificate was based and within the 10 years immediately preceding his application; and

C. The applicant meets the requirements of subsection 3, paragraph B.

5. Renewal. An applicant for renewal of a permit under this section shall show that he has fulfilled requirements of continuing professional education consisting of not less than 12 hours in each one-year period and not less than 72 hours in any 3-year period. The board shall establish by rule the number of hours of continuing professional education required in each one-year period and 3-year period and shall not require more than 120 hours in each 3-year period. That education shall consist of the general kinds and in such subjects as shall have been specified by the board by rule. The board may provide by rule that fulfillment of continuing professional education requirements of other states will be accepted in lieu of the foregoing. The board may also provide by rule for prorated continuing professional education requirements to be met by applicants whose initial permits were issued less than one year prior to the renewal date, and it may prescribe by rule special lesser requirements to be met by applicants for permit renewal whose prior permits lapsed prior to their applications for renewal, and regarding whom it would in consequence be inequitable to require a full compliance with all requirements of continuing professional education that would otherwise have been applicable to the period of lapse. The board in its discretion, may renew a permit to practice 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 in respect of requirements of continuing professional education, the board in its discretion may use and rely, among other things, upon guidelines and pronouncements of recognized educational and professional organizations; may prescribe for content, duration and organization of courses; may take into account any impediments to interstate practice of public accountancy which may result from differences in those requirements in other states; and may provide for relaxation or suspension of those requirements in regard to applicants who certify that they do not intend to engage in the practice of public accountancy.

6. Prior certification. Applicants for initial issuance or renewal of permits under this section shall list in their applications all states in which they have applied for or hold certificates or permits and each holder of or applicant for a permit under this section shall notify the board in writing, within 30 days after its occurrence, of any is-

suance, denial, revocation or suspension of a certificate or permit by another state.

7. Fee. The board shall charge a fee for each application for initial issuance or renewal of a permit under this section in an amount prescribed by the board by rule.

8. Adjudicatory hearing. The board shall not refuse to renew a permit for any reason other than failure to pay a required fee, 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 certificate or permit 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 his application, the reasons for the denial of his application and his right to request a hearing.

9. Expiration; notice. All permits shall expire on June 30th of each year or on such other date as the commissioner determines. Notices of expiration shall be mailed to each permittee's last known address at least 30 days in advance of the expiration of his permit. The notice shall include any requests for information necessary for renewal.

Permits 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 expiration date shall be subject to all requirements governing new applicants under this chapter, in addition to fulfilling any continuing educational requirements the board may deem necessary. The board in its discretion, giving due consideration to the protection of the public, may waive any or all requirements if that renewal application is made within 2 years from the date of that expiration. Any certificate holder whose employment by any government agency prohibits or precludes his practice of public accountancy in this State, by application to the board, shall be excused from paying the annual permit fee during the period of that employment.

§12252. Permits to practice; firms

1. Permits granted. The board shall grant or renew permits to practice public accountancy to firms that make application and demonstrate their qualifications in accordance with this section.

2. Duration. Permits shall be initially issued and renewed for a period of one year, but in any event, expiring on June 30th following issuance or renewal. Applications for permits shall be made in that form and, in the case of applications for renewal, between such dates as the board may by rule specify and the board shall grant or deny any such application no later than 60 days after the application is filed in proper form. In any case when the applicant seeks the opportunity to show that issuance or renewal of a permit was mistakenly denied

or when the board is not able to determine whether it should be granted or denied, the board may issue to the applicant a provisional permit, which shall expire 90 days after its issuance or when the board determines whether or not to issue or renew the permit for which application was made, whichever shall first occur.

3. Individual permits required. An applicant for initial issuance or renewal of a permit to practice under this section shall be required to show that each partner, officer or shareholder who regularly works in this State, and each employee holding a certificate who regularly works in this State, holds a valid individual permit to practice, issued under section 12251 or the corresponding provision of prior law, and that each other partner, officer or shareholder holds a certificate and is licensed to practice public accountancy in some other state.

4. Office registered. An applicant for initial issuance or renewal of a permit to practice under this section shall be required to register each office of the firm within this State with the board and to show that each such office is under the charge of a person holding a valid permit to practice, issued under section 12251 or the corresponding provision of prior law.

5. Fee. The board may charge a fee for each application for initial issuance or renewal of a permit under this section in an amount prescribed by the board by rule.

6. Out-of-state permits. Applicants for initial issuance or renewal of permits under this section shall in their application list all states in which they have applied for, or hold permits to, practice public accountancy and each holder of, or applicant for, a permit under this section 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, any change in the identity of the persons in charge of those offices and any issuance, denial, revocation or suspension of a permit by any other state.

7. Adjudicatory hearing. The board shall not refuse to renew a permit for any reason other than failure to pay a required fee, unless it has afforded the applicant an opportunity for an adjudicatory hearing. The board shall hold an adjudicatory hearing at the written request of any applicant who is denied a permit 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 his application, the reasons for the denial of his application and his right to request a hearing.

SUBCHAPTER VI

APPOINTMENT OF COMMISSIONER AS AGENT

§12263. Appointment of Commissioner as agent

Application by a person or a firm not a resident of this State for a certificate under section 12228 or 12240 or a permit to practice under section 12251 or 12252 shall constitute appointment of the commissioner as the applicant's agent upon whom process may be served in any action or proceeding against the applicant arising out of any transaction or operation connected with or incident to the practice of public accountancy by the applicant within this State.

SUBCHAPTER VII

ENFORCEMENT AGAINST HOLDERS OF

CERTIFICATES AND PERMITS

§12273. Revocation or suspension

1. Revocation or suspension. The board may suspend or revoke a certificate or permit pursuant to Title 5, section 10004. The Administrative Court may revoke or suspend a certificate or permit or refuse to renew a permit upon any of the grounds set forth in this section. In addition, the board may refuse to issue a certificate or permit, refuse to renew a permit, place a licensee on probation or censure a licensee upon any of the grounds set forth in this section as follows:

A. Fraud or deceit in obtaining a certificate as certified public accountant, a certificate as public accountant or a permit to practice public accountancy under this chapter;

B. Cancellation, revocation, suspension or refusal to renew authority to engage in the practice of public accountancy in any other state for any cause;

C. Failure, on the part of a holder of a permit under section 12251 or 12252 to maintain compliance with the requirements for issuance or renewal of that permit or to report changes to the board under section 12251, subsection 6, or 12252, subsection 6;

D. Revocation or suspension of the right to practice before any state or federal agency;

E. Dishonesty, fraud or gross negligence in the practice of public accountancy or in the filing or failure to file his own income tax returns;

F. Violation of this chapter or rule promulgated by the board under this chapter;

G. Violation of any rule of professional conduct promulgated by the board under section 12214, subsection 4;

H. Conviction of a felony, or of any crime, an element of which is dishonesty or fraud, under the laws of the United States, this State or of any other state if the acts involved have constituted a crime under the laws of this State;

I. Performance of any fraudulent act while holding a certificate or permit issued under this chapter or prior law; and

J. Any conduct reflecting adversely upon the licensee's fitness to engage in the practice of public accountancy.

2. Remedial action. In lieu of, or in addition to, any remedy specifically provided in subsection 1, the board may require of a licensee:

A. A quality review conducted in such fashion as the board may specify; and

B. Satisfactory completion of such continuing professional education programs as the board may specify.

3. Costs. In any proceeding in which a remedy provided by subsection 1 or 2 is imposed, the board may also require the respondent licensee to pay the costs of the proceeding.

§12274. Enforcement procedures; investigations

1. Board; action. The board may, upon receipt of a complaint or other information suggesting violations of this chapter or of the rules of the board, conduct investigation of all complaints and all allegations of noncompliance with, or violations of, this chapter or of the rules of the board. The board may designate a member, or any other person of appropriate competence, to serve as investigating officer to conduct an investigation, who shall report his findings to the board upon completion of the investigation. After receiving and considering the investigatory report, the board may:

A. Report its findings to the Attorney General for prosecution in the Administrative Court for suspension in accordance with Title 4, chapter 25; or

B. Hold an adjudicatory hearing in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV. Following the hearing the board may:

(1) Report its findings to the Attorney General for prosecution under paragraph A;

(2) Place the licensee on probation for a certain period of time during which the licensee shall file periodic affidavits of his practice in accordance with the standards set by the board; or

(3) Censure the licensee by letter.

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 investiga-

tion, the board may proceed under subsection 1.

3. Discipline. In any case when the board renders a decision imposing discipline against a licensee under this section and section 12273, the board shall examine its records to determine whether the licensee holds a certificate or a permit to practice public accountancy 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.

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 certificate or a permit or refused to renew a permit, the board may modify the suspension or reissue the certificate or permit upon application in writing by the person or firm affected and for good cause shown.

B. The board shall by rule specify the manner in which those applications shall be made, the times within which they shall be made and the circumstances in which hearings will be held.

C. Before reissuing or terminating the suspension of a certificate or permit 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 certificate or permit conditional and subject to satisfactory completion of a quality review conducted in such fashion as the board may specify.

§12275. Unlawful acts

1. Issuance of reports. No person or firm not holding a valid permit issued under section 12251 or 12252 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 his 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 he holds in the organization;

B. Any act of a public official or employee in the performance of his duties as such; or

C. The performance by any person of other services involving the use of accounting skills, including management advisory or consulting services, the prep-

aration of tax returns, the furnishing of advice on tax matters and the preparation of financial statements without the issuance of reports.

2. Misuse of title; individual; certified public accountants. No person not holding a valid certificate issued under section 12227, shall 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.

3. Use of title. No firm may 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 permit issued under section 12252; and

B. All partners, officers and shareholders of the firm hold certificates.

4. Misuse of title; public accountant. No persons 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 he holds a valid permit issued under section 12251.

5. Misuse of title; firm; public accountant. No firm not holding a valid permit 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.

6. Similar titles prohibited. No person or firm not holding a valid permit issued under section 12251 or 12252 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 permit may use the titles pertaining to that certificate in any manner not prohibited by rules promulgated by the board under section 12214, subsection 4.

7. Similar designation prohibited. No person or firm not holding a valid permit issued under section 12251 or 12252 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 permit or has special competence as an auditor, provid-

ed that this subsection does not prohibit any officer, partner or employee of any firm or organization from affixing his 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 he holds in the firm or organization or prohibit any act of a public official or employee in the performance of his duties.

8. Unauthorized practice. No person holding a certificate may engage in the practice of public accountancy, unless he also holds a valid permit issued under section 12251.

9. Form of firm. No person or firm holding a permit 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, provided that the names of one or more former partners or shareholders may be included in the name of a firm or its successor.

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 he 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 he 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.

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 permit to practice issued under section 12251 or 12252, provided that the employee or assistant shall not issue any accounting or financial statements over his name.

§12276. 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 Administrative Court or whether criminal proceedings have been or may be instituted.

§12277. Misdemeanors

Any person who willfully violates section 12275 shall be guilty of a Class D crime. Whenever the board has

reason to believe that any person is liable to punishment under this section, it may certify the facts to the Attorney General who may, in his discretion, cause appropriate proceedings to be brought.

§12278. Single act evidence of practice

In any action brought under section 12273 or 12277, evidence from the commission of a single act prohibited by this chapter shall be sufficient to justify a penalty, injunction, restraining order or conviction, respectively, without evidence of a general course of conduct.

§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 shall not voluntarily disclose information communicated to him 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 shall be considered confidential, provided that 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, in ethical investigations conducted by private professional organizations or in the course of quality reviews.

§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.

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

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.

Sec. 3. Allocation. The following funds are allocated from the Board of Accountancy Fund to carry out the purposes of this Act.

	1987-88	1988-89
<u>PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF</u>		
Board of Accountancy		
Personal Services	(1)	(1)
All Other	\$19,000	\$20,000
<p>To provide funding for a Clerk Typist III position to act as clerk to the board to carry out the day-to-day operation of the board.</p>		

Effective September 29, 1987.

CHAPTER 490

H.P. 1361 — L.D. 1863

AN ACT to Make Changes in the Laws Governing Public Utilities.

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

PART A

Sec. 1. 35-A MRSA §501, sub-§1, as enacted by PL 1987, c. 141, Pt. A, §6, is repealed and the following enacted in its place:

1. Other systems prohibited. Nothing in this Title requires any public utility engaged in interstate commerce to act contrary to the requirements of any federal law relating to public utilities engaged in interstate commerce.

Sec. 2. 35-A MRSA §703, sub-§4, as enacted by PL 1987, c. 141, Pt. A, §6, is amended to read:

4. Forfeiture. A person who violates this section by knowingly soliciting, accepting or receiving an unlawful preference from a utility commits a civil violation for which a forfeiture not to exceed \$1,000 shall be adjudged for each offense. A public utility that offers or grants an unlawful preference commits a civil violation for which a forfeiture not to exceed \$1,000 may be adjudged for each offense.

Sec. 3. 35-A MRSA §1306, sub-§5, ¶B, as enacted by PL 1987, c. 141, Pt. A, §6, is repealed and the follow-