

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIRST LEGISLATURE

Legislative Document

No. 1051

H. P. 722

House of Representatives, February 5, 1963

Referred to Committee on Business Legislation. Sent up for concurrence and ordered printed.

HARVEY R. PEASE, Clerk

Presented by Mr. Watkins of Windham.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-THREE

AN ACT Concerning the Practice of Public Accountancy.

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

Sec. 1. R. S., c. 80-A, additional. The Revised Statutes are amended by adding a new chapter 80-A, to read as follows:

'Public Accountancy.

Sec. 1. Board of accountancy. The Maine Board of Accountancy shall consist of 3 members appointed by the Governor. Each member of the board shall be a citizen of the United States and a resident of this State who holds a certified public accountant certificate issued under the laws of this State and who is in active practice as a certified public accountant. The term of office of each present member of the board shall expire as now provided. The successor of each present member of the board shall be appointed for a term expiring September 1 in the 3rd year after his appointment, and thereafter each member of the board shall be appointed for a term of 3 years, so that the term of office of one member shall expire September 1st each year. 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 shall have been appointed and shall have qualified. The Governor shall remove from the board any member whose permit to practice has become void, revoked or suspended, and may, after hearing, remove any member of the board for neglect of duty or other just cause.

Sec. 2. Organization, powers, duties, compensation and expenses. At the annual meeting, which shall be held in September of each year, the members shall elect from their number a chairman, secretary and treasurer. The offices of secre-

tary and treasurer may be held by the same person. Said board may adopt a seal and make bylaws, rules and regulations for the transaction of its business and the government of its affairs. Two members shall constitute a quorum for the transaction of business, and special meetings shall be called upon the request of any 2 members, or upon the call of the chairman. All fees and other moneys collected by the board shall be promptly transmitted by the treasurer of the board to the Treasurer of State, together with an account of such receipts. Such moneys are to be used only for expenses of the board upon requisition drawn on the Controller. Each member of the board shall receive \$5 per hour and his necessary expenses, while engaged in the discharge of his official duties. Travel expense reimbursement shall not exceed the rate paid to state employees. If receipts of the board are not sufficient to cover all expenses and compensation of the board, the board may reduce equitably the compensation of its individual members.

The board may promulgate and amend rules of professional conduct appropriate to establish and to maintain a high standard of integrity and of dignity in the profession of public accountancy. The board shall have printed and published for public distribution, at such times as the board may determine, but at least once in every 3 years, a register which shall contain the names of all certified public accountants, all practitioners holding registration cards under this chapter, the names of the members of the board, regulations of the board, rules of professional conduct and such other matters as may be deemed proper by the board. Copies of such registers shall be mailed to all persons registered under this chapter. The publication and mailing expenses of such register shall be paid for from the cash receipts of the board.

Sec. 3. Certificate. Any person who shall have received from the board a certificate of his qualifications to practice as a certified public accountant, as provided in section 4, shall be styled and known as a certified public accountant, and no other persons shall assume such title or use the abbreviation C. P. A. or any other words, letters or figures to indicate that the person using the same is such certified public accountant.

Sec. 4. Certified public accountants. The certificate of "certified public accountant" shall be granted by the board to any person who is a citizen of the United States or has duly declared his intention of becoming such citizen, and who is a resident of this State and has a business therein or, is an employee regularly employed therein, and who has attained the age of 21 years, and who is of good moral character, and who meets the requirements of education and experience as provided;

I. Education. Minimum education and experience requirements shall consist of a high school diploma or its equivalent and 4 years of practical experience in public accounting or its equivalent.

II. Experience. In the event the applicant has additional formal education beyond high school, the required practical experience may be reduced at the discretion of the board at a rate not to exceed $\frac{1}{2}$ year experience for each year of advanced education; and who shall have passed a written examination

in practical accounting, theory of accounts, auditing and such other subjects as the board deems necessary.

At such times as the board may fix, it shall hold meetings for the examination of applicants for certificates and shall give notice thereof by publication in a daily newspaper in each of the Cities of Augusta, Bangor, Lewiston and Portland, stating the time and place of such meetings, not less than 60 days prior to the date thereof. Application on the form prescribed by the board shall be filed with the secretary of the board not less than 30 days prior to the time fixed for the examination. The board may, at its discretion, waive examination in accounting practice or any 2 subjects that the applicant has successfully passed at one examination within a period of 3 years, 6 semi-annual examinations, in this or any other state or territory of the United States in which the requirements for examination are, in the opinion of the board, equivalent to those of this State. The board may waive examination of any applicant who has successfully passed all subjects within a 3-year period in any other state or territory of the United States in which the requirements for examination are, in the opinion of the board, equivalent to those of this State.

Sec. 5. Persons holding certificates from other states. The board may, in its discretion, waive the examination and upon the payment of the fee of \$35 specified in section 6, issue a certificate of certified public accountant under section 4, to any person who is a resident of this State and who is the holder of a certificate as certified public accountant issued under the laws of another state or foreign government which is then in full force and effect, provided the requirements in the state or foreign government which has granted the certificate to the applicant are, in the opinion of the board, equivalent to those of this State.

Sec. 6. Fees and 2nd examination. Each applicant for examination shall pay the secretary of the board a fee of \$35 at the time of filing his application. If the applicant fails to pass the examination, the fee shall not be returned to him, but he shall be entitled to be re-examined at any advertised meeting at which there are to be other applicants for examination, on payment of an additional fee of \$7 for each section of the examination in which he is re-examined.

Sec. 7. Public accountants; registration thereof. Any person who is a resident of this State, or has a place of business therein and who has attained the age of 21 years, and who is of good moral character and who meets the requirements of subsection I, II or III may register with the board as a public accountant on or before the 30th day of June, 1965.

I. Public accountants. Persons who held themselves out to the public as public accountants and who were engaged as principals in the practice of public accounting as their principal occupation, or as a staff employee of a public accountant or a partnership of public accountants, within this State at the effective date of this chapter.

II. Armed forces. Persons serving in the armed forces of the United States of America at the effective date of this chapter who immediately prior to entering such service qualified under subsection I. In the case of any such person, the time for registration shall be extended for a period of 6 months from the time such person is separated from active duty with such service.

III. Federal or state employees. Persons doing accounting work as an employee of the United States Internal Revenue service or the United States general accounting office, or the State of Maine as a comprehensive accountant or auditor.

The board shall charge a fee, not to exceed \$15 for registration. The board shall in each case determine whether the applicant is eligible for registration. Any individual who is so registered and who holds a permit issued under section 9 shall be styled and known as a "public accountant".

Sec. 8. Registration of partnerships and offices. Each partnership or office engaged in or established for the practice of public accounting in the State of Maine shall register with the Maine Board of Accountancy on or before July 1st annually, but no fee shall be charged for such registration. Application for registration shall be in the form prescribed by the board and the requirements for registration shall be as follows:

I. Partnership of certified public accountants. Registration of a partnership of certified public accountants must meet all of the following requirements:

A. At least one general partner thereof must be a certified public accountant of this State in good standing.

B. Each partner thereof must be a certified public accountant of some state in good standing.

C. Each partner engaged in public accounting in this State and each resident manager in charge of an office of the firm in this State must be a certified public accountant of this State in good standing.

A partnership so registered may use the words "certified public accountants" or the abbreviation "C. P. A.'s" in connection with its partnership name. Notification shall be given to the board within one month, after the admission of, or withdrawal of, a partner from any partnership so registered.

II. Partnership of public accountants. Registration of a partnership of public accountants must meet all of the following requirements:

A. At least one general partner thereof, and each partner thereof personally engaged within this State in the practice of public accounting, must be a certified public accountant or a public accountant of this State in good standing.

B. Each resident manager in charge of an office of a firm in this State must be a certified public accountant or a public accountant of this State in good standing.

A partnership which is so registered may use the words "public accountants" in connection with its partnership name. Notification shall be given the board, within one month, after the admission of, or withdrawal of, a partner from any partnership so registered.

III. Office. Each office established or maintained in this State for the

practice of public accounting by any person or persons subject to this chapter must be registered and must be under the direct supervision of a resident manager who may be either a principal or staff employee holding a permit under section 9, which is in full force and effect, provided that the title "certified public accountant" or abbreviation "C. P. A." shall not be used in connection with such office unless such resident manager is a holder of a certificate under section 4 and a valid permit issued under section 9.

Sec. 9. Annual permits to practice. Permits to engage in the practice of public accounting in this State shall be issued by the board to holders of the certificate of certified public accountant issued under section 4 and to persons registered under section 7, provided all offices of such certificate holder or registrant are maintained and registered as required under section 8. There shall be an initial permit fee in an amount to be determined by the board not to exceed \$15. All permits shall expire on the last day of June of each year and may be renewed annually for a period of one year by certificate holders and registrants in good standing upon payment of an annual renewal fee of not to exceed \$10. Re-registration forms must be mailed by the board to all permit-holders by May 31st annually. Failure of a registrant to apply for such annual permit to practice within 3 years from the expiration date of the permit to practice last obtained or renewed, or 3 years from the date upon which registrant was granted his registration, if no permit was ever issued to him, shall deprive him of the right to such permit, unless the board, in its discretion, determines such failure to have been due to excusable cause. In such case the renewal fee or the fee for the issuance of the original permit, as the case may be, shall be such amount as the board shall, from time to time determine, but not in excess of \$35. Any registrant whose employment by any government agency prohibits or precludes his practice of public accounting in the State of Maine, by application to the board, will be excused from paying the annual permit fee during said period of employment.

Sec. 10. Revocation or suspension of certificate, or registration, or permit. After notice and hearing as provided in section 13, the board may revoke, or may suspend for a period not to exceed 2 years, any certificate issued under section 4, or any registration granted under section 7, or may revoke, suspend or refuse to renew any permit issued under section 9, or may censure the holder of any such permit, for any one or any combination of the following causes:

- I. Fraud or deceit in obtaining certificate. Fraud or deceit in obtaining a certificate as certified public accountant, or in obtaining registration under this chapter, or in obtaining a permit to practice public accounting under this chapter;
- II. Fraud in practice. Dishonesty, fraud or gross negligence in the practice of public accounting;
- III. Violation of section 13. Violation of any of the provisions of section 13;
- IV. Violation of rule. Violation of a rule of professional conduct promulgated by the board under the authority granted by this chapter;
- V. Felony. Conviction of a felony under the laws of any state or of the United States;

VI. Certain crimes. Conviction of any crime, an element of which is dishonesty or fraud, under the laws of any state or of the United States;

VII. Reprisal of another state. Cancellation, revocation, suspension or refusal to renew authority to practice as a certified public accountant or a public accountant by any other state, for any cause other than failure to pay an annual registration fee in such other state;

VIII. Revocation outside State. Suspension or revocation of the right to practice before any state or federal agency;

IX. Citizenship. Failure to become a citizen of the United States within 6 years by any person not a citizen of the United States when he or she received a certificate as certified public accountant under this chapter;

X. Annual permit. Failure of a certificate holder or registrant in active public practice, to obtain an annual permit under section 9;

XI. Conduct. Conduct discreditable to the public accounting profession.

Sec. 11. Hearings before board; notice procedure; review.

I. Commencement of proceeding. The board may initiate proceedings under this chapter either on its own motion or on the complaint of any person.

II. Notice, service and contents. A written notice stating the nature of the charge or charges against the accused and the time and place of the hearing before the board on such charges shall be served on the accused not less than 30 days prior to the date of said hearing either personally or by mailing a copy thereof registered mail to the address of the accused last known to the board.

III. Failure to appear. If, after having been served with the notice of hearing, the accused fails to appear at said hearing and defend, the board may proceed to hear evidence against him and may enter such order as shall be justified by the evidence, which order shall be final unless he petitions for a review thereof, provided, that within 30 days from the date of any order, upon a showing of good cause for failing to appear and defend, the board may reopen said proceedings and may permit the accused to submit evidence in his behalf.

IV. Counsel, witnesses, cross-examination. At any hearing the accused may appear in person and with counsel, produce evidence and witnesses on his own behalf, cross-examine witnesses and examine such evidence as may be produced against him. The accused shall be entitled, on application to the board, to the issuance of subpoenas to compel the attendance of witnesses on his behalf.

V. Subpoenas, oaths. The board, or any member thereof, may issue subpoenas to compel the attendance of witnesses and the production of documents, and may administer oaths, take testimony, hear proofs and receive exhibits in evidence in connection with or upon hearing under this chapter. In case of disobedience to a subpoena, the board may invoke the aid of any court of this State in requiring the attendance and testimony of witnesses and the production of documentary evidence.

VI. Evidence. The board shall not be bound by technical rules of evidence.

VII. Record. A stenographic record of the hearings shall be kept and a transcript thereof filed with the board.

VIII. Attorney for the board. At all hearings the Attorney General of this State, or one of his assistants designated by him, or such other legal counsel as may be employed, shall appear and represent the board.

IX. Decision. The decision of the board shall be by majority vote thereof.

X. Review by court. Anyone adversely affected by any order of the board may obtain a review thereof by filing a written petition for review with the Superior Court within 30 days after the entry of said order. The petition shall state the grounds upon which the review is asked and shall pray that the order of the board be modified or set aside in whole or in part. A copy of such petition shall be forthwith served upon any member of the board and thereupon the board shall certify and file in the court a transcript of the record upon which the order complained of was entered. The case shall then be tried de novo on the record made before the board, without the introduction of new or additional evidence but the parties shall be permitted to file briefs as in an ordinary case at law. The court may affirm, modify or set aside the board's order in whole or in part, or may remand the case to the board for further evidence, and may, in its discretion, stay the effect of the board's order pending its determination of the case. The court's decision shall have the force and effect of a decree in equity.

Sec. 12. Reinstatement. Upon application in writing and after hearing pursuant to notice, the board may issue a new certificate to a certified public accountant whose certificate shall have been revoked, or may permit the re-registration of anyone whose registration has been revoked, or may reissue or modify the suspension of any permit to practice public accounting which has been revoked or suspended.

Sec. 13. Acts declared unlawful.

I. Use of title by person, certified public accountant. No person shall assume or use the title or designation "certified public accountant" or the abbreviation "C. P. A." or any other title, designation, words, letters, abbreviation, sign, card or device tending to indicate that such person is a certified public accountant, unless such person has received a certificate as a certified public accountant under section 4, holds a permit issued under section 9 which is not revoked or suspended, hereinafter referred to as a "live permit", and all of such person's offices in this State for the practice of public accounting are maintained and registered as required under section 8. A foreign accountant who has registered under section 7, and who holds a live permit issued under section 9, may use the title under which he is generally known in his country, followed by the name of the country from which he received his certificate, license or degree.

II. Use of title by partnership, certified public accountant. No partnership shall assume or use the title or designation "certified public accountant" or the abbreviation "C. P. A." or any other title, designation, words, letters, abbreviation, sign, card or device tending to indicate that such partnership is

composed of certified public accountants unless such partnership is registered as a partnership of certified public accountants under section 8 and all of such partnership's offices in this State for the practice of public accounting are maintained and registered as required under section 8.

III. Use of title by person, public accountant. No person shall assume or use the title or designation "public accountant" or any other title, designation, words, letters, abbreviation, sign, card or devices tending to indicate that such person is a public accountant, unless such person is registered as a public accountant under section 7 and all of such person's offices in this State for the practice of public accounting are maintained and registered as required under section 8, or unless such person has received a certificate as a certified public accountant under section 4, holds a live permit issued under section 9 and all of such person's offices in the State for the practice of public accounting are maintained and registered as required under section 8.

IV. Use of title by partnership, public accountant. No partnership shall assume or use the title or designation "public accountant" or any other title, designation, words, letters, abbreviation, sign, card or device tending to indicate that such partnership is composed of public accountants, unless such partnership is registered as a partnership of public accountants under section 8 or as a partnership of certified public accountants under section 8, and all of such partnership's offices in this State for the practice of public accounting are maintained and registered as required under section 8.

V. Confusing titles. No person or partnership shall assume or use the title or designation "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant", "registered accountant", or any other title or designation likely to be confused with "certified public accountant" or "public accountant", or any of the abbreviations "CA", "PA", "RA", or "LA", or similar abbreviations likely to be confused with "CPA". Anyone who holds a live permit issued under section 9 and all of whose offices in this State for the practice of public accounting are maintained and registered under section 8 may hold himself out to the public as an "accountant" or "auditor"; and provided further that a foreign accountant registered under section 7, who holds a live permit issued under section 9 and all of whose offices in this State for the practice of public accounting are maintained and registered as required under section 8, may use the title under which he is generally known in his country, followed by the name of the country from which he received his certificate, license or degree.

VI. Corporation. No corporation shall assume or use the title or designation "certified public accountant", or "public accountant"; nor shall any corporation assume or use the title or designation "certified accountant", "chartered accountant", "licensed accountant", "registered accountant", or any other title or designation likely to be confused with "certified public accountant" or "public accountant", or any of the abbreviations "CPA", "PA", "CA", "EA", "RA", or "LA" or similar abbreviations likely to be confused with "CPA".

VII. Words indicating accountant, person. No person shall sign or affix his name or any trade or assumed name used by him in his profession or business,

with any wording indicating that he is an accountant or auditor, or with any wording indicating that he has expert knowledge in accounting or auditing, to any accounting or financial statement, or to any opinion on, report on or certificate to any accounting or financial statement, unless he holds a live permit under section 9, and all of his offices in this State for the practice of public accounting are maintained and registered under section 8.

This subsection shall not prohibit any officer, employee, partner or principal of any organization affixing his signature to any statement or report in reference to the financial affairs of said organization with any wording designating the position, title or office which he holds in said organization, nor shall this subsection prohibit any act of a public official or public employee in the performance of his duties as such.

VIII. Words indicating accountant, partnership. No person shall sign or affix a partnership name, with any wording indicating that it is a partnership composed of accountants or auditors or persons having expert knowledge in accounting or auditing, to any accounting or financial statement, or to any report on or certificate to any accounting or financial statement, unless the partnership is registered under section 8 and all of its offices in this State for the practice of public accounting are maintained and registered under section 8.

IX. Words indicating accountant, corporation. No person shall sign or affix a corporate name with any wording indicating that it is a corporation performing services as accountants or auditors or composed of accountants or auditors or persons having expert knowledge in accounting or auditing, to any accounting or financial statement or to any report on or certificate to any accounting or financial statement.

X. Not holding live permit. No person or partnership not holding a live permit issued under section 9, and no corporation, shall hold himself or itself out to the public as an "accountant" or "auditor" by use of either or both of such words or any sign, card, letterhead or in any advertisement or directory, without indicating thereon or therein that such person, partnership or corporation does not hold such a permit. This subsection shall not prohibit any officer, employee, partner or principal of any organization from describing himself by the position, title or office he holds in such organization; nor shall this subsection prohibit any act of public official or public employee in the performance of his duties as such.

XI. Conjunction with names. No person shall assume or use the title or designation "certified public accountant" or "public accountant" in conjunction with names indicating or implying that there is a partnership or in conjunction with the designation "and Company", or "and Co." or a similar designation if, in any such case, there is in fact no bona fide partnership registered under section 8. A sole proprietor or partnership lawfully using such title or designation in conjunction with such names or designation on the effective date of this chapter, may continue to do so if he or it otherwise complies with this chapter.

Sec. 14. Exceptions, acts not prohibited. Nothing contained in this chapter shall prohibit any person not a certified public accountant or public accountant

from serving as an employee of, or an assistant to, a certified public accountant or public accountant or partnership composed of certified public accountants or public accountants holding a permit to practice issued under section 9 or a foreign accountant registered under section 7, provided that such employee or assistant shall not issue any accounting or financial statement over his name. Nothing contained in this chapter shall prohibit a certified public accountant or a registered public accountant of another state, or any accountant who holds a certificate, degree or license in a foreign country, constituting a recognized qualification for the practice of public accounting in such country, from temporarily practicing in this State on professional business incident to his regular practice outside this State, provided that such temporary practice is conducted in conformity with the regulations and rules of professional conduct promulgated by the board.

Sec. 15. Injunction against unlawful act. Whenever in the judgment of the board, any person has engaged in or is about to engage in any acts or practices which constitute or will constitute a violation of section 13, the board may make application to the appropriate court for an order enjoining such acts or practices, and upon a showing by the board that such person has engaged or is about to engage in any such acts or practices, an injunction, restraining order or such other order as may be appropriate shall be granted by such court without bond.

Sec. 16. Misdemeanors, penalty. Any person who violates any provision of section 13 shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$500, or by imprisonment for not more than one year, or by both. 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 of this State who may, in his discretion, cause appropriate proceedings to be brought.

Sec. 17. Single act evidence of practice. The display or uttering by a person of a card, sign, advertisement or other printed, engraved or written instrument or device, bearing a person's name in conjunction with the words "certified public accountant" or any abbreviation thereof, or "public accountant" or any abbreviation thereof shall be prima facie evidence in any action brought under section 15 or section 16 that the person whose name is so displayed caused or procured the display or uttering of such card, sign, advertisement or other printed, engraved or written instrument or device and that such person is holding himself out to be a certified public accountant or a public accountant holding a permit to practice under section 9. In any case action, evidence of the commission of a single act prohibited by this chapter shall be sufficient to justify an injunction or a conviction without evidence of a general course of conduct.

Sec. 18. Ownership of accountants' working papers. All statements, records, schedules, working papers and memoranda made by a certified public accountant or public accountant incident to or in the course of professional service to clients by such accountant, except reports submitted by a certified public accountant or public accountant to a client, shall be and remain the property of such accountant, in the absence of an express agreement between such accountant and the client to the contrary. No such statement, record, schedule, working paper or memorandum shall 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 new partners of such accountant.

Sec. 19. Definitions.

I. Board. The term "board" when used in this chapter means the "board of accountancy" created by section 1.

II. Masculine terms. Masculine terms when used in this chapter shall include the feminine.

III. State. The term "state" when used in this chapter includes any state, territory or insular possession of the United States, or the District of Columbia.'

Sec. 2. R. S., c. 80, repealed. Chapter 80 of the Revised Statutes, as amended, is repealed.

Sec. 3. Limitation. Nothing in this act shall invalidate or affect any action taken under any law in effect prior to the effective date of this act, nor shall invalidate or affect any proceeding instituted under such law before the effective date of this act.