

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 579

6
7 S.P. 220

In Senate, February 14, 1985

8 Referred to the Committee on Judiciary. Sent down for concurrence and
9 ordered printed. Ordered sent forthwith.

10 JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Chalmers of Knox.

11 Cosponsored by Senator Carpenter of Aroostook, Senator Gauvreau of
Androscoggin and Representative Priest of Brunswick.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-FIVE
16

17 AN ACT to Amend the Laws Relating to
18 Admission to the Bar.
19

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

22 Sec. 1. 4 MRSA §801, first ¶, as amended by PL
23 1983, c. 812, §12, is further amended to read:

24 The Board of Examiners for the Examination of Ap-
25 plicants for Admission to the Bar, as established by
26 Title 5, section 12004, subsection 1, and in this
27 chapter called the "board," shall be composed of 7
28 lawyers of the State and one representative of the
29 public, each of whom shall hold office for a term of
30 5 years beginning on the first day of ~~September~~
31 January of the year of appointment and ending on the
32 last day of ~~August~~ December of the year of expiration
33 of the appointment. As terms expire, lawyer members
34 of the board shall be appointed ~~annually~~ by the Gov-
35 ernor on the recommendation of the Supreme Judicial
36 Court and the public member shall be appointed by the

1 Governor. Vacancies occurring from death, resigna-
2 tion, removal or inability to act shall be filled in
3 like manner for the unexpired term. The board shall
4 hold at least 2 sessions annually at such times and
5 places in the State as the board shall determine and
6 the Supreme Judicial Court shall approve for the pur-
7 pose of examining all applicants for admission to the
8 bar, as to their legal learning and general qualifi-
9 cations to practice in the several courts of the
10 State as attorneys and counselors at law and solici-
11 tors and counselors in chancery. Upon such examina-
12 tion being had, the board shall issue to each appli-
13 cant who shall pass the required examinations and
14 satisfy all other requirements of this chapter a cer-
15 tificate of qualification stating the standing of the
16 applicant and recommending his admission to the bar.
17 The members of the board shall elect from their num-
18 ber a secretary and a chairman who may, but need not,
19 be the same person and shall make such rules and
20 regulations relative to the performance of the duties
21 of the board and to the examinations which the board
22 conducts as to them may seem proper. Four members of
23 said board shall constitute a quorum for the transac-
24 tion of business. All rules and regulations adopted
25 by the board shall be promulgated in the manner pro-
26 vided by the Maine Administrative Procedure Act, Ti-
27 tle 5, chapter 375, subchapter II subject to the ap-
28 approval of the Supreme Judicial Court.

29 Sec. 2. 4 MRSA §802, as amended by PL 1973, c.
30 550, §1, is further amended to read.

31 §802. Attorneys from other states

32 Practicing attorneys whose domiciles are in other
33 states and territories, or ~~from~~ foreign countries,
34 may be admitted on motion to try cases in any of the
35 courts of this State by such those courts, but shall
36 not be admitted to the general practice of law in
37 this State without complying with section 803 805-A.

38 Sec. 3. 4 MRSA §803, as amended by PL 1975, c.
39 66, §2, is repealed and the following enacted in its
40 place:

41 §803. Qualifications for taking bar examination

1 1. Evidence of graduation. Before taking the ex-
2 amination for admission to the bar of the State, each
3 applicant shall produce to the board satisfactory evi-
4 dence that he graduated with a bachelor's degree
5 from an accredited college or university or that he
6 successfully completed at least 2 years' work as a
7 candidate for that degree at an accredited college or
8 university.

9 2. Further qualifications. Each applicant shall
10 produce to the board satisfactory evidence that he:

11 A. Graduated from a law school accredited by the
12 American Bar Association;

13 B. Graduated from a law school accredited by the
14 United States jurisdiction in which it is lo-
15 cated, that he has been admitted to practice by
16 examination in one or more jurisdictions within
17 the United States and has been in active practice
18 there for at least 3 years;

19 C. Graduated from a foreign law school with a
20 legal education which, in the board's opinion, is
21 equivalent to that provided in those law schools
22 accredited by the American Bar Association; or

23 D. Successfully completed 2/3 of the require-
24 ments for graduation from a law school accredited
25 by the American Bar Association and then pursued
26 the study of law in the office of an attorney
27 within the State for at least one year.

28 3. Eligibility for examination. When an appli-
29 cant has satisfied the board that these requirements
30 have been fulfilled and has paid a fee fixed by the
31 board and approved by the Supreme Judicial Court, he
32 is eligible to take the examinations prepared or
33 adopted by the board to determine if he has the qual-
34 ifications required by this chapter for admission to
35 the bar.

36 Sec. 4. 4 MRSA §804, as amended by PL 1983, c.
37 247, is repealed.

38 Sec. 5. 4 MRSA §805, as repealed and replaced by
39 PL 1975, c. 66, §4, is repealed and the following en-
40 acted in its place:

1 §805. Reexamination

2 Any applicant who fails to pass an examination
3 required by the board for admission to practice shall
4 be notified by the board. In accordance with the
5 board's rules, he may reapply to take another exami-
6 nation and he shall pay the same fee then required of
7 an original applicant.

8 Sec. 6. 4 MRS.A §805-A is enacted to read:

9 §805-A. Qualifications for admission to practice

10 1. Certificate of qualification; admission. Any
11 person who files an affidavit with the court that he
12 has established his domicile within the State and
13 produces a certificate of qualification from the
14 board recommending his admission to the bar may be
15 admitted to practice as an attorney in the courts of
16 this State on motion in open court. No person may be
17 denied the opportunity to qualify for admission be-
18 cause of race, creed, color, national origin or sex.

19 2. Issuance of certificate of qualification. The
20 board shall issue a certificate of qualification
21 stating that the applicant is a person of good moral
22 character and possesses sufficient learning in the
23 law to practice as an attorney in the courts of this
24 State to each applicant who:

25 A. Produces satisfactory evidence of good moral
26 character;

27 B. Attains the passing grades established by the
28 board on those examinations required by the
29 board; and

30 C. Establishes that he attended and observed any
31 legal proceedings required by the board.

32 3. Admission within one year of passing bar ex-
33 amination. The applicant must be admitted to practice
34 within one year from the time that he has been noti-
35 fied of his passing of the bar examination. This one-
36 year period may be enlarged by successive one-year
37 periods by a Justice of the Supreme Judicial Court on
38 motion for good cause shown during the period.

1 Sec. 7. 4 MRSA §806-A is enacted to read:

2 §806-A. License to practice subject to condition

3 Each new lawyer is admitted to practice law sub-
4 ject to the condition that he complete, within 18
5 months after his license is issued, any practical
6 skills course approved by the board. This period may
7 be enlarged by a Justice of the Supreme Judicial
8 Court on motion for good cause shown during that pe-
9 riod.

10 If the new lawyer fails to complete this course
11 within the period allowed, the board shall notify the
12 Supreme Judicial Court and the Board of Overseers of
13 the Bar that the new lawyer's license is invalid and
14 continued practice of law is unauthorized under sec-
15 tion 807.

16 A new lawyer who loses his license to practice
17 under this section and who wishes to be readmitted to
18 practice must regualify under sections 803 and 805-A.

19 Sec. 8. 4 MRSA §807, as amended by PL 1983, c.
20 796, §2, is further amended to read:

21 §807. Unauthorized practice of law

22 Unless duly admitted to the bar of this State, no
23 person may practice law or any branch thereof, or
24 hold himself out to practice law or any branch there-
25 of, within the State or before any court therein, or
26 demand or receive any remuneration for those services
27 rendered in this State. Whoever, not being duly ad-
28 mitted to the bar of this State, shall practice law
29 or any branch thereof, or hold himself out to prac-
30 tice law or any branch thereof, within the State or
31 before any court therein, or demand or receive any
32 remuneration for those services rendered in this
33 State, shall be guilty of a Class E crime. No person
34 may practice law or hold himself out to practice law
35 within the State or before its courts, or demand or
36 receive any remuneration for those services rendered
37 in this State, unless he has been admitted to the bar
38 of this State and has complied with section 806-A.
39 Any person who practices law in violation of these
40 requirements is guilty of the unauthorized practice

1 of law, which is a Class E crime. This section shall
2 not be construed to apply to practice before any Fed-
3 eral Court by any person ~~duly~~ admitted to practice
4 therein; nor to a person pleading or managing his own
5 cause in court; nor to the officer or employee of a
6 corporation, partnership, sole proprietorship or gov-
7 ernmental entity, who is not an attorney, but is ap-
8 pearing for that organization in an action cognizable
9 as a small claim under Title 14, chapter 738; nor to
10 a person who is not an attorney, but is representing
11 a municipality under Title 12, section 4812-C, sub-
12 section 2; Title 30, section 3222, subsection 2; or
13 Title 30, section 4966, subsection 1; nor to a person
14 who is not an attorney, but is representing the De-
15 partment of Environmental Protection under Title 38,
16 section 342, subsection 7. In all proceedings, the
17 fact, as shown by the records of the Board of
18 Overseers of the Bar, that that person is not re-
19 corded as a member of the bar shall be prima facie
20 evidence that he is not a member of the bar licensed
21 to practice law in the State.

22 Notwithstanding any of the other provisions of
23 this chapter and under such terms, conditions, limi-
24 tations, qualifications and supervision as the Su-
25 preme Judicial Court shall by rule require, a senior
26 law student in a law school in this State approved by
27 the American Bar Association or a senior law student
28 who is a Maine resident and who is enrolled in a law
29 school which is in another state and which is ap-
30 proved by the American Bar Association, may appear in
31 the courts of the State on behalf of the State or an
32 agency thereof, or under the supervision of an orga-
33 nization providing legal services to the indigent ap-
34 proved by the Supreme Judicial Court on behalf of an
35 individual receiving services through such organiza-
36 tion.

37 **Sec. 9. Transition.** The members of the Board of
38 Examiners for the Examination of Applicants for Ad-
39 mission to the Bar shall continue to serve until
40 their successors are appointed.

41 The applicants for the July 1986 bar examination
42 shall be the first applicants subject to the require-
43 ments of these provisions.

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STATEMENT OF FACT

2 This bill reflects changes in Maine's bar admis-
3 sion process recommended by the Commission for the
4 Evaluation of the Bar Admission Process and adopted
5 by the Board of Examiners for the Examination of Ap-
6 plicants for Admission to the Bar.

7 The present bar admission process, which, through
8 the bar examination, tests only whether an applicant
9 has minimal satisfactory legal knowledge and academic
10 skills, is inadequate because it fails to examine an
11 applicant's lawyering skills. The requirements pro-
12 posed in this bill of mandatory attendance at any le-
13 gal proceeding required by the board before admis-
14 sion, as well as attendance at a practical skills
15 training course, presently "bridging the gap," after
16 admission, are in keeping with the state's general
17 goal of preventing incompetent persons from becoming
18 licensed attorneys. The result is that an admittee
19 must be at least "minimally competent" in his legal
20 knowledge and lawyering skills to function as a li-
21 censed attorney in the State.

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