

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 867

H.P. 644 House of Representatives, March 20, 1987
Reference to the Committee on Business Legislation
suggested and ordered printed.

EDWIN H. PERT, Clerk
Presented by Representative ERWIN of Rumford.

Cosponsored by Representative GWADOSKY of Fairfield,
Senators BALDACCI of Penobscot and PERKINS of Hancock.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

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Sec. 1. 32 MRSA c. 58, as amended, is repealed.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

1 §12201. Definitions

2 As used in this section, unless the context indi-
3 icates otherwise, the following terms have the follow-
4 ing meanings.

5 1. Board. "Board" means the Board of Accountan-
6 cy established under Title 5, section 12004, subsec-
7 tion 1, or its predecessor under prior law.

8 2. Certificate. "Certificate" means a certifi-
9 cate as "certified public accountant" issued under
10 section 12227 or corresponding provisions of prior
11 law, and a certificate as "public accountant" issued
12 under section 12239 or corresponding provisions of
13 prior law, or a corresponding certificate as a certi-
14 fied public accountant issued after examination under
15 the law of any other state.

16 3. Commissioner. "Commissioner" means the Com-
17 missioner of Professional and Financial Regulation.

18 4. Department. "Department" means the Depart-
19 ment of Professional and Financial Regulation.

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

22 6. Practice of or practicing public accountancy.
23 "Practice of or practicing public accountancy" means
24 the performance or the offering to perform by a per-
25 son or firm holding itself out to the public as a li-
26 cencee, for a client or potential client, of one or
27 more kinds of services involving the use of account-
28 ing or auditing skills, including the issuance of re-
29 ports on financial statements; or of one or more
30 kinds of management advisory or consulting services,
31 or the preparation of tax returns or the furnishing
32 of advice on tax matters.

33 7. Quality review. "Quality Review" means a
34 study, appraisal or review of one or more aspects of
35 the professional work of a person or firm in the
36 practice of public accountancy, by a person or per-
37 sons who hold certificates and who are not affiliated
38 with the person or firm being reviewed.

1 8. Report. "Report" when used with reference to
2 financial statements, means an opinion, report, or
3 other form of language that states or implies assur-
4 ance as to the reliability of any financial state-
5 ments and that also includes or is accompanied by any
6 statement or implication that the person or firm iss-
7 uing it has special knowledge or competence in ac-
8 counting or auditing. Such a statement or implica-
9 tion of special knowledge or competence may arise
10 from use by the issuer of the report of names or ti-
11 ties indicating that he or it is an accountant or au-
12 ditor, or from the language of the report itself.
13 The term "report" includes any form of language which
14 disclaims an opinion when the form of language is
15 conventionally understood to imply any positive as-
16 surance as to the reliability of the financial state-
17 ments referred to and special competence on the part
18 of the person or firm issuing the language. The re-
19 port includes any other form of language that is
20 conventionally understood to imply that assurance,
21 special knowledge or competence.

22 9. Rule. "Rule" means any rule or other written
23 directive of general application duly adopted by the
24 board.

25 SUBCHAPTER II

26 BOARD OF ACCOUNTANCY

27 §12213. Appointment

28 The Board of Accountancy, as established by Title
29 5, section 12004, subsection 1, shall be within the
30 Department of Professional and Financial Regulation.
31 The board shall consist of 5 members appointed by the
32 Governor. Each member of the board shall be a citi-
33 zen of the United States and a resident of this
34 State. Three members shall be holders of certifi-
35 icates issued under section 12252 and of currently
36 valid permits issued under section 12281 and whose
37 principal occupation has been in active practice as a
38 certified public accountant for at least the 5 pre-
39 ceding years. One member shall hold a certificate
40 issued under section 12273 and shall hold a currently
41 valid permit issued under section 12281 and whose
42 principal occupation has been in active practice as a

1 noncertified public accountant for at least the 5
2 preceding years. One member of the board shall be a
3 representative of the public. Appointments shall be
4 for 3-year terms and the term of one member, other
5 than the member registered under section 12273 and
6 the public member's term, shall expire each calendar
7 year and appointments of less than 3 years may be
8 made in order to comply with this limitation. Any
9 vacancy occurring during a term shall be filled by
10 appointment for the unexpired term. Upon the expira-
11 tion of his term of office, a member shall continue
12 to serve until his successor has been appointed and
13 has qualified and the successor's term shall be 3
14 years from the date of the expiration, regardless of
15 the date of his appointment. No person may be eligi-
16 ble to serve more than 3 full consecutive terms pro-
17 vided that, for this purpose only, a period actually
18 served which exceeds 1/2 of the 3-year term shall be
19 deemed a full term. The Governor shall remove any
20 member of the board for cause.

21 §12214. Organization; powers and duties

22 1. Organization. The board shall elect annually
23 from among its members a chairman and a secretary who
24 shall be a certified public accountant. The board
25 shall meet at such times and places as may be fixed
26 by the board or at the call of the chairman or a ma-
27 jority of the board members. Three members of the
28 board shall constitute a quorum for the transaction
29 of business. The board may have a seal. The board
30 shall retain or arrange for the retention of all ap-
31 plications and all documents under oath that are
32 filed with the board and also records of its proceed-
33 ings and it shall maintain a registry of the names
34 and addresses of all licensees under this chapter.
35 In any proceeding in court, civil or criminal, aris-
36 ing out of or founded upon any provisions of this
37 chapter, copies of any of the records certified as
38 true copies under the seal of the board shall be ad-
39 missible in evidence as tending to prove the contents
40 of those records.

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

1 3. Receipts and expenses. The money is to be
2 used for the expenses of administering the provisions
3 of this chapter, which may include, but shall not be
4 limited to, the costs of conducting investigations
5 and of taking testimony and procuring the attendance
6 of witnesses before the board or its committees; all
7 legal proceedings taken under this chapter for the
8 enforcement of this chapter; and education programs
9 for the benefit of the public and licensees and their
10 employees.

11 4. Rules. The board may, in accordance with
12 procedures established by the Maine Administrative
13 Procedure Act, Title 5, chapter 375, subchapter II,
14 adopt such rules as may be reasonably necessary for
15 the proper performance of its duties and the adminis-
16 tration of this chapter, including, but not limited
17 to rules of professional conduct appropriate to es-
18 tablish and to maintain a high standard of integrity
19 and of dignity in the profession of public accountan-
20 cy and regulations prescribing requirements of con-
21 tinuing education.

22 5. Employees. The commission may appoint, sub-
23 ject to the Civil Service Law, such employees as may
24 be necessary to carry out this chapter. Any person
25 so employed shall be located in the department and
26 under the administrative and supervisory direction of
27 the commissioner.

28 6. Register. The department will make availa-
29 ble, at cost, a register which shall contain the
30 names of all individuals licensed by the board.

31 7. Hearings. Hearings may be conducted by the
32 board to assist with investigations, to determine
33 whether grounds exist for suspension, revocation or
34 denial of a license or as otherwise deemed necessary
35 for the fulfillment of its responsibilities under
36 this chapter. Hearings shall be conducted in accord-
37 ance with the Maine Administrative Procedure Act, Ti-
38 tle 5, chapter 375, subchapter IV, to the extent ap-
39 licable.

40 8. Contracts. The board may enter into con-
41 tracts to carry out its responsibilities under this
42 chapter.

1 9. Fees. The board may establish application
2 and examination fees in amounts which are reasonable
3 and necessary for their respective purposes. All
4 those fees shall accompany the applications. Appli-
5 cation fees are nonrefundable. Examination fees
6 shall not be returned to an applicant should he fail
7 to pass an examination.

8 10. Budget. The board shall submit to the com-
9 missioner its budgetary requirements in the same man-
10 ner as is provided in Title 5, section 1665.

11 11. Reports. No later than August 1st of each
12 year, the board shall submit to the commissioner, for
13 the preceding fiscal year, its annual report of op-
14 erations, together with those comments and recommen-
15 dations as the commissioner deems essential.

16 SUBCHAPTER III

17 REGISTRATION OF CERTIFIED PUBLIC ACCOUNTANTS

18 §12227. Certificate

19 Any person who shall have received from the board
20 a certificate of his qualifications to practice as a
21 certified public accountant, prior to the effective
22 date of this chapter or as provided in section 12228,
23 shall be styled and known as a certified public ac-
24 countant and no other persons may assume that title
25 or use the abbreviation "CPA" or any other words,
26 letters or figures to indicate that the person using
27 the title is a certified public accountant.

28 §12228. Certified public accountants

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

35 2. Good character. "Good character" for the
36 purposes of this section means lack of a history of
37 dishonest or felonious acts. The board may refuse to
38 grant a certificate on the ground of failure to sat-

1 isfy this requirement only if there is a substantial
2 connection between the lack of good character of the
3 applicant and the professional responsibilities of a
4 licensee and if the finding by the board of lack of
5 good character is supported by clear and convincing
6 evidence. When an applicant is found to be unqual-
7 ified for a certificate because of a lack of good
8 character, the board shall furnish the applicant a
9 statement containing the findings of the board, a
10 complete record of the evidence upon which the deter-
11 mination was based and a notice of the applicant's
12 right of appeal.

13 3. Education requirement. The education re-
14 quirement for a certificate, which must be met no la-
15 ter than 120 days after an applicant sits for the ex-
16 amination prescribed in subsection 4, shall be a bac-
17 calaureate degree or its equivalent conferred by a
18 college or university acceptable to the board.

19 4. Examination; administration. The examination
20 to be passed as a condition for the granting of a
21 certificate shall be in writing, shall be held twice
22 a year, and shall test the applicant's knowledge of
23 the subjects of accounting theory, accounting prac-
24 tice, auditing and such other related subjects as the
25 board may specify by rule. The time for holding the
26 examination shall be fixed by the board and may be
27 changed from time to time. The board shall prescribe
28 by rule the methods of applying for and conducting
29 the examination, including methods for grading papers
30 and determining a passing grade required of an appli-
31 cant for a certificate, provided that the board, to
32 the extent possible, shall see to it that the grading
33 of the examination and the passing grades are uniform
34 with those applicable in all other states. The board
35 may make the use of all or any part of the Uniform
36 Certified Public Accountant Examination and Advisory
37 Grading Service of the American Institute of Certi-
38 fied Public Accountants and may contract with 3rd
39 parties to perform such administrative services with
40 respect to the examination as it considers appropri-
41 ate to assist it in performing its duties under this
42 section.

43 5. Examination; passing. An applicant shall be
44 required to pass all parts of the examination pro-

1 vided for in subsection 4, in order to qualify for a
2 certificate. If, at a given sitting of the examina-
3 tion, an applicant passes 2 or more, but not all,
4 parts with the accounting practice part of the exami-
5 nation being treated for this purpose as 2 parts,
6 then the applicant shall be given credit for those
7 parts that he has passed and need not sit for reexam-
8 ination in those parts, provided that:

9 A. The applicant wrote all parts of the examina-
10 tion at that sitting;

11 B. The applicant attained a minimum grade of 50
12 on each part not passed at that sitting;

13 C. The applicant passes the remaining parts of
14 the examination within 6 consecutive examinations
15 given after the one at which the first parts were
16 passed;

17 D. At each subsequent sitting at which the ap-
18 plicant seeks to pass any additional parts, the
19 applicant writes all parts not yet passed; and

20 E. In order to receive credit for passing addi-
21 tional parts in any such subsequent sitting, the
22 applicant attains a minimum grade of 50 on parts
23 written, but not passed on that sitting.

24 6. Examination; credits. An applicant shall be
25 given credit for any and all parts of an examination
26 passed in another state if that credit would have
27 been given, under then applicable requirements, if
28 the applicant had taken the examination in this
29 State.

30 7. Waiver. The board may, in particular cases,
31 wave or defer any of the requirements of subsections
32 5 and 6 regarding the circumstances in which the var-
33 ious parts of the examination must be passed upon a
34 showing that, by reason of circumstances beyond the
35 applicant's control, he was unable to meet that re-
36 quirement.

37 8. Administration fee. The board may charge, or
38 provide for a 3rd party administering the examination
39 to charge, each applicant a fee in an amount pre-

1 scribed by the board by rule for each part of the ex-
2 amination or reexamination taken by the applicant.

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

10 10. Experience. The applicant shall show that
11 he has had 2 years of experience in the practice of
12 public accountancy or its equivalent, meeting re-
13 quirements prescribed by the board by rule; or, if
14 the applicant's educational qualifications comprise a
15 baccalaureate degree meeting the requirements set out
16 in section 12228, subsection 3, and a master's degree
17 conferred by a college or university approved by the
18 board and one year of experience, then only one year
19 of experience in that practice or its equivalent is
20 required.

21 11. Board discretion. The certified members of
22 the board have the full and sole responsibility for
23 the determination of the qualifications of applicants
24 for the certificate of "certified public accountant."
25 Only persons recommended by them to the board shall
26 be granted the certificate of "certified public ac-
27 countant."

28 SUBCHAPTER IV

29 REGISTRATION OF PUBLIC ACCOUNTANTS

30 §12239. Certificate

31 Any person who receives from the board a certifi-
32 cate of his qualifications to practice as public ac-
33 countant, prior to the effective date of this chapter
34 or as provided in section 12240, shall be styled and
35 known as a public accountant, and no other persons
36 may assume to use the abbreviation "PA" or any other
37 words, letters or figures to indicate that the person
38 using the abbreviation is the public accountant.

39 §12240. Public Accountants

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

7 2. Good character. "Good character" for pur-
8 poses of this section means lack of a history of dis-
9 honest or felonious acts. The board may refuse to
10 grant a certificate on the ground of failure to sat-
11 isfy this requirement only if there is a substantial
12 connection between the lack of good character of the
13 applicant and the professional responsibilities of a
14 licensee and if the finding by the board of lack of
15 good character is supported by clear and convincing
16 evidence. When an applicant is found to be unquali-
17 fied for a certificate because of a lack of good
18 character, the board shall furnish the applicant a
19 statement containing the findings of the board, a
20 complete record of the evidence upon which the deter-
21 mination was based and a notice of the applicant's
22 right of appeal.

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

29 4. Examination; administration. The examination
30 to be passed as a condition for the granting of a
31 certificate shall be in writing, held twice a year,
32 and include Parts I and II of the "Examination in Ac-
33 counting Practice" portion of the Uniform Certified
34 Public Accountant Examination prepared by the Board
35 of Examiners of the American Institute of Certified
36 Public Accountants and shall also include other ap-
37 plicable subjects in the field of accounting, such as
38 auditing, theory of accounts, practical accounting
39 problems, commercial law as it affects accountancy,
40 federal and state taxation and such other subjects
41 pertinent to accounting as the board may specify by
42 rule. The time for holding that examination shall be
43 fixed by the board and may be changed from time to
44 time. The board shall prescribe by rule the methods

1 of applying for and conducting the examination, in-
2 cluding methods for grading papers and determining a
3 passing grade required of an applicant for a certifi-
4 cate, provided that the board, to the extent possi-
5 ble, shall see to it that the grading of the examina-
6 tion and the passing grades are uniform with those
7 applicable in all other states. The board may con-
8 tract with 3rd parties to perform those administra-
9 tive services with respect to the examination as it
10 considers appropriate to assist it in performing its
11 duties under this section.

12 5. Examination; passing. An applicant shall be
13 required to pass all parts of the examination provi-
14 ded in subsection 4, in order to qualify for a cer-
15 tificate. If, at a given sitting of the examination,
16 an applicant passes 2 or more, but not all parts,
17 with the accounting practice part of the examination
18 being treated for this purpose as 2 parts, then the
19 applicant shall be given credit for those parts that
20 he has passed and need not sit for reexamination in
21 those parts, provided that the applicant passes the
22 remaining parts of the examination within 6 consec-
23 utive examinations given after the one at which the
24 first parts were passed.

25 6. Administrative fee. The board may charge, or
26 provide for a 3rd party administering the examination
27 to charge, each applicant a fee in an amount pre-
28 scribed by the board by rule for each part of the ex-
29 amination or reexamination taken by the applicant.

30 7. Experience. The applicant shall show that he
31 has had 2 years of experience in the practice of pub-
32 lic accountancy or its equivalent, meeting require-
33 ments prescribed by the board by rule; or, if the ap-
34 plicant's educational qualifications comprise a bac-
35 calaureate degree meeting the requirements set out in
36 subsection 3 and a master's degree conferred by a
37 college or university approved by the board and one
38 year of experience, then only one year of experience
39 in that practice or its equivalent is required.

40 8. Board discretion. The noncertified member or
41 members of the board shall have the full and sole re-
42 sponsibility for the determination of the qualifica-
43 tions of applicants for the certificate of "public

1 accountant." Only persons recommended by them to the
2 board shall be granted the certificate of "public ac-
3 countant."

4 §12241. Reciprocity

5 The noncertified member or members of the board
6 may, in their discretion, waive the examination and
7 upon payment of a fee not to exceed \$50, issue a cer-
8 tificate of public accountant under section 12240 to
9 any person who is the holder of a similar certificate
10 or license issued under the laws of another state or
11 foreign government, which is then in full force and
12 effect, provided that the requirements in the state
13 or foreign government which has granted the certifi-
14 cate or license to the applicant are, in the opinion
15 of the noncertified member or members of the board,
16 equivalent to those of this State.

17 SUBCHAPTER V

18 PERMITS TO PRACTICE

19 §12251. Permits to practice; individual

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

24 2. Duration. Permits shall be initially issued
25 and renewed for a period of one year, but in any
26 event shall expire on the June 30th following issu-
27 ance or renewal.

28 Applications for those permits shall be made in that
29 form, and in the case of applications for renewal,
30 between such dates, as the board shall by rule speci-
31 fy, and the board shall grant or deny any such appli-
32 cation no later than 60 days after the application is
33 filed in proper form. In any case where the appli-
34 cant seeks the opportunity to show that issuance or
35 renewal of a permit was mistakenly denied or where
36 the board is not able to determine whether it should
37 be granted or denied the board may issue to the ap-
38 plicant a provisional permit, which shall expire 90
39 days after its issuance or when the board determines

1 whether or not to issue or renew the permit for which
2 application was made, whichever shall first occur.

3 3. Requirements. An applicant for initial issu-
4 ance of a permit under this section shall show:

5 A. That he holds a valid certificate; and

6 B. If the applicant's certificate was issued
7 more than 4 years prior to his application for
8 issuance of an initial permit under this section,
9 that he has fulfilled the requirements of contin-
10 uing professional education that has been appli-
11 cable under subsection 5 if he had secured his
12 initial permit within 4 years of issuance of his
13 certificate and was now applying under subsection
14 5 for renewal of that permit.

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

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

22 B. The applicant:

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

26 (2) At the time of the issuance of the ap-
27 plicant's certificate in the other state,
28 met all those requirements then applicable
29 in this State; or

30 (3) Had 4 years of experience in the prac-
31 tice of public accountancy or equivalent
32 meeting requirements prescribed by the board
33 by rule, after passing the examination upon
34 which his certificate was based and within
35 the 10 years immediately preceding his ap-
36 plication; and

37 C. The applicant meets the requirements of sub-
38 section 3, paragraph B.

1 5. Renewal. An applicant for renewal of a per-
2 mit under this section shall show that he has ful-
3 filled requirements of continuing professional educa-
4 tion consisting of not more than 120 hours in each
5 3-year period, including no less than 1/6th of the
6 total 3-year requirement in each year of the 3-year
7 period. The number of hours of continuing profes-
8 sional education required in each 3-year period shall
9 be established by the board by rule and shall consist
10 of not less than 72 hours in that period. That edu-
11 cation shall consist of the general kinds and in such
12 subjects as shall have been specified by the board by
13 rule. The board may provide by rule that fulfillment
14 of continuing professional education requirements of
15 other states will be accepted in lieu of the forego-
16 ing. The board may also provide by rule for prorated
17 continuing professional education requirements to be
18 met by applicants whose initial permits were issued
19 substantially less than one year prior to the renewal
20 date, and it may prescribe by rule special lesser re-
21 quirements to be met by applicants for permit renewal
22 whose prior permits lapsed substantially prior to
23 their applications for renewal, and regarding whom it
24 would in consequence be inequitable to require a full
25 compliance with all requirements of continuing pro-
26 fessional education that would otherwise have been
27 applicable to the period of lapse. The board in its
28 discretion, may renew a permit to practice despite
29 failure to furnish evidence of satisfaction of re-
30 quirements of continuing professional education only
31 upon condition that the applicant follow a particular
32 program or schedule of continuing professional educa-
33 tion. In issuing rules and individual orders in re-
34 spect of requirements of continuing professional edu-
35 cation, the board in its discretion may use and rely,
36 among other things, upon guidelines and pronounc-
37 ements of recognized educational and professional or-
38 ganizations; may prescribe for content, duration and
39 organization of courses; may take into account any
40 impediments to interstate practice of public account-
41 ancy which may result from differences in those re-
42 quirements in other states; and may provide for
43 relaxation or suspension of those requirements in re-
44 gard to applicants who certify that they do not in-
45 tend to engage in the practice of public accountancy.

1 6. Prior certification. Applicants for initial
2 issuance or renewal of permits under this section
3 shall list in their applications all states in which
4 they have applied for or hold certificates or permits
5 and each holder of or applicant for a permit under
6 this section shall notify the board in writing, with-
7 in 30 days after its occurrence, of any issuance, den-
8 ial, revocation or suspension of a certificate or
9 permit by another state.

10 7. Fee. The board shall charge a fee for each
11 application for initial issuance or renewal of a per-
12 mit under this section in an amount prescribed by the
13 board by rule.

14 8. Adjudicatory hearing. The board shall not
15 refuse to renew a permit for any reason other than
16 failure to pay a required fee, unless it has afforded
17 the licensee an opportunity for an adjudicatory hear-
18 ing. The board shall hold an adjudicatory hearing at
19 the written request of any person who is denied a
20 certificate or permit without a hearing for any rea-
21 son other than failure to pay a required fee, pro-
22 vided that the request for hearing is received by the
23 board within 30 days of the applicant's receipt of
24 written notice of the denial of his application, the
25 reasons for the denial of his application and his
26 right to request a hearing.

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

34 Permits may be renewed up to 90 days after the date
35 of expiration upon payment of a late fee of \$10 in
36 addition to the renewal fee. Any person who submits
37 an application for renewal more than 90 days after
38 the expiration date shall be subject to all require-
39 ments governing new applicants under this chapter, in
40 addition to fulfilling any continuing educational re-
41 quirements the board may deem necessary. The board
42 in its discretion, giving due consideration to the
43 protection of the public, may waive any or all re-

1 quirements if that renewal application is made within
2 2 years from the date of that expiration. Any cer-
3 tificate holder whose employment by any government
4 agency prohibits or precludes his practice of public
5 accountancy in this State, by application to the
6 board, shall be excused from paying the annual permit
7 fee during the period of that employment.

8 §12252. Permits to practice; firms

9 1. Permits granted. The board shall grant or
10 renew permits to practice public accountancy to firms
11 that make application and demonstrate their qualifi-
12 cations in accordance with this section.

13 2. Duration. Permits shall be initially issued
14 and renewed for a period of one year, but in any
15 event, expiring on June 30th following issuance or
16 renewal. Applications for permits shall be made in
17 that form and, in the case of applications for renew-
18 al, between such dates as the board may by rule spec-
19 ify and the board shall grant or deny any such appli-
20 cation no later than 60 days after the application is
21 filed in proper form. In any case when the applicant
22 seeks the opportunity to show that issuance or renew-
23 al of a permit was mistakenly denied or when the
24 board is not able to determine whether it should be
25 granted or denied, the board may issue to the appli-
26 cant a provisional permit, which shall expire 90 days
27 after its issuance or when the board determines
28 whether or not to issue or renew the permit for which
29 application was made, whichever shall first occur.

30 3. Individual permits required. An applicant
31 for initial issuance or renewal of a permit to prac-
32 tice under this section shall be required to show
33 that each partner, officer or shareholder who regu-
34 larly works in this State, and each employee holding
35 a certificate who regularly works in this State,
36 holds a valid individual permit to practice, issued
37 under section 12251 or the corresponding provision of
38 prior law, and that each other partner, officer or
39 shareholder holds a certificate and is licensed to
40 practice public accountancy in some other state.

41 4. Office registered. An applicant for initial
42 issuance or renewal of a permit to practice under

1 this section shall be required to register each of-
2 office of the firm within this State with the board and
3 to show that each such office is under the charge of
4 a person holding a valid permit to practice, issued
5 under section 12251 or the corresponding provision of
6 prior law.

7 5. Fee. The board may charge a fee for each ap-
8 plication for initial issuance or renewal of a permit
9 under this section in an amount prescribed by the
10 board by rule.

11 6. Out-of-state permits. Applicants for initial
12 issuance or renewal of permits under this section
13 shall in their application list all states in which
14 they have applied for, or hold permits to, practice
15 public accountancy and each holder of, or applicant
16 for, a permit under this section shall notify the
17 board in writing, within 30 days after its occur-
18 rence, of any change in the identities of partners,
19 officers or shareholders who work regularly within
20 this State, any change in the number or location of
21 offices within this State, any change in the identity
22 of the persons in charge of those offices and any is-
23 suance, denial, revocation or suspension of a permit
24 by any other state.

25 7. Adjudicatory hearing. The board shall not
26 refuse to renew a permit for any reason other than
27 failure to pay a required fee, unless it has afforded
28 the applicant an opportunity for an adjudicatory
29 hearing. The board shall hold an adjudicatory hear-
30 ing at the written request of any applicant who is
31 denied a permit without a hearing for any reason oth-
32 er than failure to pay a required fee, provided that
33 the request for hearing is received by the board
34 within 30 days of the applicant's receipt of written
35 notice of the denial of his application, the reasons
36 for the denial of his application and his right to
37 request a hearing.

38 SUBCHAPTER VI

39 APPOINTMENT OF COMMISSIONER AS AGENT

40 §12263. Appointment of Commissioner as agent

1 Application by a person or a firm not a resident
2 of this State for a certificate under section 12228
3 or 12240 or a permit to practice under section 12251
4 or 12252 shall constitute appointment of the commis-
5 sioner as the applicant's agent upon whom process may
6 be served in any action or proceeding against the ap-
7 plicant arising out of any transaction or operation
8 connected with or incident to the practice of public
9 accountancy by the applicant within this State.

10 SUBCHAPTER VII

11 ENFORCEMENT AGAINST HOLDERS OF

12 CERTIFICATES AND PERMITS

13 §12273. Revocation or suspension

14 1. Revocation or suspension. The board may sus-
15 pend or revoke a certificate or permit pursuant to
16 Title 5, section 10004. The Administrative Court may
17 revoke or suspend a certificate or permit or refuse
18 to renew a permit upon any of the grounds set forth
19 in this section. In addition, the board may refuse
20 to issue a certificate or permit, refuse to renew a
21 permit, place a licensee on probation or censure a
22 licensee upon any of the grounds set forth in this
23 section as follows:

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

28 B. Cancellation, revocation, suspension or re-
29 fusal to renew authority to engage in the prac-
30 tice of public accountancy in any other state for
31 any cause;

32 C. Failure, on the part of a holder of a permit
33 under section 12251 or 12252 to maintain compli-
34 ance with the requirements for issuance or renew-
35 al of that permit or to report changes to the
36 board under section 12251, subsection 6, or
37 12252, subsection 6;

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

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

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

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

9 H. Conviction of a felony, or of any crime, an
10 element of which is dishonesty or fraud, under
11 the laws of the United States, this State or of
12 any other state if the acts involved have consti-
13 tuted a crime under the laws of this State;

14 I. Performance of any fraudulent act while hold-
15 ing a certificate or permit issued under this
16 chapter or prior law; and

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

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

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

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

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

32 §12274. Enforcement procedures; investigations

33 1. Board; action. The board may, upon receipt
34 of a complaint or other information suggesting viola-
35 tions of this chapter or of the rules of the board,
36 conduct investigation of all complaints and all alle-

1 gations of noncompliance with, or violations of, this
2 chapter or of the rules of the board. The board may
3 designate a member, or any other person of appropri-
4 ate competence, to serve as investigating officer to
5 conduct an investigation, who shall report his find-
6 ings to the board upon completion of the investiga-
7 tion. After receiving and considering the investiga-
8 tory report, the board may:

9 A. Report its findings to the Attorney General
10 for prosecution in the Administrative Court for
11 suspension in accordance with Title 4, chapter
12 25; or

13 B. Hold an adjudicatory hearing in accordance
14 with the Maine Administrative Procedure Act, Ti-
15 tle 5, chapter 375, subchapter IV. Following the
16 hearing the board may:

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

19 (2) Place the licensee on probation for a
20 certain period of time during which the li-
21 icensee shall file periodic affidavits of his
22 practice in accordance with the standards
23 set by the board; or

24 (3) Censure the licensee by letter.

25 2. Review. The board may review the publicly
26 available professional work of licensees on a general
27 and random basis, without any requirement of a formal
28 complaint or suspicion of impropriety on the part of
29 any particular licensee. If, as a result of such re-
30 view, the board discovers reasonable grounds for a
31 more specific investigation, the board may proceed
32 under subsection 1.

33 3. Discipline. In any case when the board ren-
34 ders a decision imposing discipline against a licens-
35 ee under this section and section 12273, the board
36 shall examine its records to determine whether the
37 licensee holds a certificate or a permit to practice
38 public accountancy in any other state; and, if so,
39 the board shall notify the board of accountancy of
40 that other state of its decision by mail within 45

1 days of rendering the decision. The board may also
2 furnish information relating to proceedings resulting
3 in disciplinary action to other public authorities
4 and to private professional organizations having a
5 disciplinary interest in the licensee.

6 4. Board; consideration. The board shall con-
7 sider applications upon suspension, revocation or re-
8 usal to renew according to this subsection.

9 A. In any case when the board has suspended or
10 revoked a certificate or a permit or refused to
11 renew a permit, the board may modify the suspen-
12 sion or reissue the certificate or permit upon
13 application in writing by the person or firm af-
14 fected and for good cause shown.

15 B. The board shall by rule specify the manner in
16 which those applications shall be made, the times
17 within which they shall be made and the circum-
18 stances in which hearings will be held.

19 C. Before reissuing or terminating the suspen-
20 sion of a certificate or permit under this sec-
21 tion, and as a condition for reissuance or termi-
22 nation of suspension, the board may require the
23 applicant to show successful completion of speci-
24 fied continuing professional education. The board
25 may make the reinstatement of a certificate or
26 permit conditional and subject to satisfactory
27 completion of a quality review conducted in such
28 fashion as the board may specify.

29 §12275. Unlawful acts

30 1. Issuance of reports. No person or firm not
31 holding a valid permit issued under section 12251 or
32 12252 may issue a report on financial statements of
33 any other person, firm, organization or governmental
34 unit. This prohibition does not apply to an officer,
35 partner or employee of any firm or organization af-
36 fixing his signature to any statement or report in
37 reference to the financial affairs of that firm or
38 organization with any wording designating the posi-
39 tion, title or office that he holds in the organiza-
40 tion; or prohibit any act of a public official or em-
41 ployee in the performance of his duties as such; or

1 prohibit the performance by any persons of other ser-
2 VICES involving the use of accounting skills, includ-
3 ing the preparation of tax returns, management advis-
4 ory services and the preparation of financial state-
5 ments without the issuance of reports.

6 2. Language; review. The prohibition contained
7 in subsection 1, is applicable to issuance, by a per-
8 son or firm not holding a valid permit, of a report
9 using any form of language conventionally used with
10 respect to a review of financial statements.

11 3. Language; compilation. The prohibition con-
12 tained in subsection 1, is applicable to issuance, by
13 a person or firm not holding a valid permit, of a re-
14 port using any form of language conventionally used
15 by licensees with respect to a compilation of finan-
16 cial statements.

17 4. Misuse of title; individual; certified public
18 accountants. No person not holding a valid certifi-
19 cate issued under section 12227, shall use or assume
20 the title of "certified public accountant," the ab-
21 breivation "CPA" or any other title, designation,
22 words, letters, abbreviation, sign, card or device
23 indicating that the person is a certified public ac-
24 countant.

25 5. Use of title. No firm may assume or use the
26 title or designation "certified public accountant,"
27 the abbreviation "CPA" or any other title, designa-
28 tion, words, letters, abbreviation, sign, card or de-
29 vice indicating that the firm is composed of certi-
30 fied public accountants, unless:

31 A. The firm holds a valid permit issued under
32 section 12252; and

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

35 6. Misuse of title; public accountant. No per-
36 sons may assume or use the title or designation "pub-
37 lic accountant," the abbreviation "PA" or any other
38 title, designation, words, letters, abbreviation,
39 sign, card or device indicating that the person is a
40 public accountant unless he holds a valid permit is-
41 sued under section 12251.

1 7. Misuse of title; firm; public accountant. No
2 firm not holding a valid permit issued under section
3 12252 may assume or use the title or designation
4 "public accountant" the abbreviation "PA" or any other
5 title, designation, words, letters, abbreviation,
6 sign, card or device indicating that the firm is com-
7 posed of public accountants.

8 8. Similar titles prohibited. No person or firm
9 not holding a valid permit issued under section 12251
10 or 12252 may assume or use the title or designation
11 "certified accountant," "chartered accountant," "en-
12 rolled accountant," "licensed accountant," "regis-
13 tered accountant," "accredited accountant" or any
14 other title or designation likely to be confused with
15 the titles "certified public accountant," "public ac-
16 countant" or use any of the abbreviations "CA," "EA,"
17 "LA," "RA," "AA" or similar abbreviations likely to
18 be confused with the abbreviations "CPA" or "PA,"
19 provided that a holder of a certificate who does not
20 also hold a permit may use the titles pertaining to
21 that certificate in any manner not prohibited by
22 rules promulgated by the board under section 12214,
23 subsection 4.

24 9. Similar designation prohibited. No person or
25 firm not holding a valid permit issued under section
26 12251 or 12252 may assume or use any title or desig-
27 nation that includes the words "accountant," "audi-
28 tor," "accounting" or "auditing" in connection with
29 any other language, including the language of a re-
30 port, that implies that the person or firm holds such
31 a permit or has special competence as an accountant
32 or auditor, provided that this subsection does not
33 prohibit any officer, partner or employee of any firm
34 or organization from affixing his signature to any
35 statement in reference to the financial affairs of
36 that firm or organization with any wording designat-
37 ing the position, title or office that he holds in
38 the firm or organization or prohibit any act of a
39 public official or employee in the performance of his
40 duties.

41 10. Unauthorized practice. No person holding a
42 certificate may engage in the practice of public ac-
43 countancy, unless he also holds a valid permit issued
44 under section 12251.

1 11. Form of firm. No person or firm holding a
2 permit may engage in the practice of public account-
3 ancy using a professional or firm name or designa-
4 tion that is misleading about the legal form of the
5 firm, about the persons who are partners, officers or
6 shareholders of the firm or about any other matter,
7 provided that the names of one or more former part-
8 ners or shareholders may be included in the name of a
9 firm or its successor.

10 12. Foreign practice. Subsections 1 to 11 do
11 not apply to a person or firm holding a certificate,
12 designation, degree or license granted in a foreign
13 country entitling the holder to engage in the prac-
14 tice of public accountancy or its equivalent in that
15 country, whose activities in this State are limited
16 to the provision of professional services to persons
17 or firms who are residents of, governments of or
18 business entities of the country in which he holds
19 that entitlement, who issues no reports with respect
20 to the financial statements of any other persons,
21 firms or governmental units in this State, and who
22 does not use in this State any title or designation
23 other than the one under which he practices in that
24 country, followed by a translation of that title or
25 designation into the English language, if it is in a
26 different language and by the name of that country.

27 13. Employees. Nothing in this chapter prohib-
28 its any person, not a certified public accountant, or
29 public accountant from serving as an employee of, or
30 an assistant to, a certified public accountant, pub-
31 lic accountant, a firm of certified public account-
32 ants or of public accountants holding a permit to
33 practice issued under section 12251 or 12252, pro-
34 vided that the employee or assistant shall not issue
35 any accounting or financial statements over his name.

36 §12276. Injunction

37 The State may bring an action in Superior Court
38 to enjoin any person from violating this chapter, re-
39 gardless of whether proceedings have been or may be
40 instituted in the Administrative Court or whether
41 criminal proceedings have been or may be instituted.

42 §12277. Misdemeanors

1 Any person who willfully violates section 12275
2 shall be guilty of a Class D crime. Whenever the
3 board has reason to believe that any person is liable
4 to punishment under this section, it may certify the
5 facts to the Attorney General who may, in his discre-
6 tion, cause appropriate proceedings to be brought.

7 §12278. Single act evidence of practice

8 In any action brought under section 12273 or
9 12277, evidence from the commission of a single act
10 prohibited by this chapter shall be sufficient to
11 justify a penalty, injunction, restraining order or
12 conviction, respectively, without evidence of a gen-
13 eral course of conduct.

14 §12279. Confidential communications

15 Except by permission of the client engaging a li-
16 icensee under this chapter, or the heirs, successors
17 or personal representatives of that client, a licens-
18 ee or any partner, officer, shareholder or employee
19 of a licensee shall not voluntarily disclose informa-
20 tion communicated to him by the client relating to,
21 and in connection with, services rendered to the cli-
22 ent by the licensee in the practice of public account-
23 ancy. That information shall be considered confi-
24 dential, provided that nothing may be construed as
25 prohibiting the disclosure of information required to
26 be disclosed by the standards of the public account-
27 ing profession in reporting on the examination of fi-
28 ancial statements or as prohibiting disclosures in
29 court proceedings, investigations or proceedings un-
30 der section 12273, in ethical investigations con-
31 ducted by private professional organizations or in
32 the course of quality reviews.

33 §12280. Licensee's working papers; client's records

34 1. Records; property of licensee. All state-
35 ments, records, schedules, working papers and memo-
36 randa made by a licensee or a partner, shareholder,
37 officer, director or employee of a licensee, incident
38 to, or in the course of, rendering services to a cli-
39 ent in the practice of public accountancy, except the
40 reports submitted by the licensee to the client and
41 except for records that are part of the client's

1 records, shall be and remain the property of the li-
2 icensee in the absence of an express agreement between
3 the licensee and the client to the contrary. No
4 statement, record, schedule, working paper or memo-
5 randum may be sold, transferred or bequeathed, with-
6 out the consent of the client or his personal repre-
7 sentative or assignee, to anyone other than one or
8 more surviving partners or stockholders or new part-
9 ners or stockholders of the licensee or any combined
10 or merged firm or successor in interest to the li-
11 icensee.

12 2. Licensee to furnish items to client. A li-
13 icensee shall furnish to his client or former client
14 upon request and reasonable notice:

15 A. A copy of the licensee's working papers, to
16 the extent that the working papers include
17 records that would ordinarily constitute part of
18 the client's records and are not otherwise avail-
19 able to the client; and

20 B. Any accounting or other records belonging to,
21 or obtained from or on behalf of, the client that
22 the licensee removed from the client's premises
23 or received for the client's account. The licens-
24 ee may make and retain copies of those documents
25 of the client when they form the basis for work
26 done by him.

27 Sec. 3. Allocation. The following funds are al-
28 located from the Board of Accountancy Fund to carry
29 out the purposes of this Act.

	<u>1987-88</u>	<u>1988-89</u>
30		
31	<u>PROFESSIONAL AND FINAN-</u>	
32	<u>CIAL REGULATION, DEPART-</u>	
33	<u>MENT OF</u>	
34	Board of Accountancy	
35	Personal Services	(1)
36	All Other	(1)
	\$19,000	\$20,000

1 To provide funding
2 for a Clerk Typist
3 III position to
4 act as clerk to
5 the board to carry
6 out the day-to-day
7 operation of the
8 board.

9

STATEMENT OF FACT

10 It is the policy of this State, and the purpose
11 of this bill, to promote the reliability of informa-
12 tion that is used for guidance in financial transac-
13 tions or for accounting for or assessing the finan-
14 cial status or performance of commercial, noncommer-
15 cial and governmental enterprises. The public inter-
16 est requires that persons professing special compe-
17 tence in accountancy or offering assurance as to the
18 reliability or fairness of presentation of that in-
19 formation shall have demonstrated their qualifica-
20 tions to do so, and that no person who has not demon-
21 strated and maintained the qualifications, be permit-
22 ted to hold themselves out as having that special
23 competence or to offer that assurance; that the pro-
24 fessional conduct of persons licensed as having spe-
25 cial competence in accountancy be regulated in all
26 aspects of the practice of public accountancy; that a
27 public authority competent to prescribe and assess
28 the qualifications and to regulate the professional
29 conduct of practitioners of public accountancy be es-
30 tablished; and that the use of titles relating to the
31 practice of public accountancy that are likely to
32 mislead the public as to the status or competence of
33 the persons using those titles be prohibited.

34 This bill provides for the issuance of certifi-
35 cates as certified public accountants and public ac-
36 countants and the issuance of permits to practice
37 public accountancy; to regulate the practice of pub-
38 lic accountancy in the public interest; and to estab-
39 lish a Board of Accountancy and prescribe its powers
40 and duties.

41

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