

MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 1345

S.P. 424

In Senate, March 4, 1997

An Act to Amend the Public Accountancy Laws.

Reference to the Committee on Business and Economic Development suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator HARRIMAN of Cumberland.
Cosponsored by Representative CIANCHETTE of South Portland and
Senators: CAREY of Kennebec, DAGGETT of Kennebec, JENKINS of Androscoggin,
Representatives: BOLDUC of Auburn, HATCH of Skowhegan, LEMAIRE of Lewiston,
MAYO of Bath.

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

2 **Sec. 1. 32 MRSA §12201, first ¶**, as enacted by PL 1987, c. 489,
4 §2, is amended to read:

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

10 **Sec. 2. 32 MRSA §12201, sub-§6**, as enacted by PL 1987, c. 489,
12 §2, is repealed and the following enacted in its place:

14 **6. Licensee.** "Licensee" means the holder of a certificate,
license or permit.

16 **Sec. 3. 32 MRSA §12201, sub-§§6-A and 6-B** are enacted to read:

18 **6-A. Manager.** "Manager" means a manager of a limited
liability company.

20 **6-B. Member.** "Member" means a member of a limited
22 liability company.

24 **Sec. 4. 32 MRSA §12201, sub-§7**, as enacted by PL 1987, c. 489,
26 §2, is amended to read:

28 **7. Permit.** "Permit" means a permit ~~as granted by the board~~
to practice public accountancy ~~as provided~~ issued under ~~sections~~
30 ~~12251 and section 12252 or corresponding provisions of prior law~~
or laws of other states.

32 **Sec. 5. 32 MRSA §12201, sub-§10**, as enacted by PL 1987, c.
34 489, §2, is repealed and the following enacted in its place:

36 **10. Report.** "Report," when used with reference to
financial statements, means an opinion or other form of language
38 that states or implies assurance as to the reliability of any
financial statements and that also includes or is accompanied by
any statement or implication that the person or firm issuing it
40 has special knowledge or competence in accounting or auditing. A
document is considered a report if the issuer uses names or
42 titles indicating that the issuer is an accountant or auditor.
The term "report" also means any form of language that states an
44 opinion if that form of language is conventionally understood to
imply any positive assurance as to the reliability of the
46 financial statements referred to or special competence on the
part of the person or firm issuing such language.

2 **Sec. 6. 32 MRSA §12228, sub-§3**, as enacted by PL 1987, c. 489,
§2, is amended to read:

4 **3. Education requirement.** The education requirement for a
certificate, which must be met ~~no later than 120 days after~~
6 before an applicant sits is eligible to apply for the examination
prescribed in subsection 4, ~~shall be a baccalaureate degree or~~
8 ~~its equivalent conferred by a college or university acceptable to~~
~~the board,~~ is as follows:

10 A. During the 5-year period immediately following October
12 1, 1997, a baccalaureate degree or its equivalent conferred
14 by a college or university acceptable to the board, with an
accounting concentration or equivalent as determined by
board rule to be appropriate; and

16 B. After the expiration of the 5-year period immediately
18 following October 1, 1997, at least 150 semester hours of
20 college education, including a baccalaureate or higher
22 degree conferred by a college or university acceptable to
the board, the total educational program to include an
accounting concentration or equivalent as determined by
board rule to be appropriate.

24 **Sec. 7. 32 MRSA §12228, sub-§4**, as amended by PL 1995, c. 353,
26 §23, is further amended to read:

28 **4. Examination; administration.** The examination to be
passed as a condition for the granting of a certificate must be
30 in writing, must be held twice a year and must be ~~the Uniform~~
~~Certified Public Accountant Examination prepared by the Board of~~
32 ~~Examiners of the American Institute of Certified Public~~
~~Accountants or any other examination approved by the board~~ test
34 the applicant's knowledge of the subjects of accounting and
auditing and such other related subjects as the board may specify
36 by rule. The time for holding the examination must be fixed by
the board and may be changed from time to time. The board shall
38 prescribe by rule the methods of applying for and conducting the
examination, including methods for grading papers and determining
40 a passing grade required of an applicant for a certificate,
except that the board, to the extent possible, shall see to it
42 that the grading of the examination and the passing grades are
uniform with those applicable in all other states. The board may
44 make the use of all or any part of the Uniform Certified Public
Accountant Examination and the Advisory Grading Service of the
46 American Institute of Certified Public Accountants or any other
examination approved by the board and may contract with 3rd
48 parties to perform such administrative services with respect to
the examination as it considers appropriate to assist it in
50 performing its duties under this section.

2 **Sec. 8. 32 MRSA §12228, sub-§5**, as amended by PL 1995, c. 353,
§24, is repealed and the following enacted in its place:

4 **5. Examination; passing.** An applicant is required to pass
6 all parts of the examination provided for in subsection 4 in
8 order to qualify for a certificate. A passing grade for each
10 section is 75%. If, at a given sitting of the examination, an
12 applicant passes 2 or more but not all sections, then the
applicant is given credit for those sections that the applicant
has passed and need not sit for reexamination in those sections
if:

14 A. At that sitting the applicant wrote all sections of the
examination for which the applicant does not have credit;

16 B. The applicant attained a minimum grade of 50% on each
18 section taken at that sitting;

20 C. The applicant passes the remaining sections of the
22 examination within 6 consecutive examinations given after
the one at which the first sections were passed;

24 D. At each subsequent sitting at which the applicant seeks
26 to pass any additional sections, the applicant writes all
sections for which the applicant does not have credit; and

28 E. In order to receive credit for passing additional
30 sections in any such subsequent sitting, the applicant
attains a minimum grade of 50% on sections taken at that
32 sitting.

34 **Sec. 9. 32 MRSA §12228, sub-§§7 and 8**, as enacted by PL 1987,
c. 489, §2, are amended to read:

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

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

50 **Sec. 10. 32 MRSA §12228, sub-§10**, as amended by PL 1993, c.
634, Pt. C, §1, is further amended to read:

2 **10. Experience.** The--applicant--shall--show--that--the
3 applicant--has--had--2--years--of--experience--in--the--practice--of--public
4 accountancy--or--its--equivalent--meeting--requirements--prescribed--by
5 the--board--by--rule;--or--if--the--applicant's--educational
6 qualifications--comprise--a--baccalaureate--degree--meeting--the
7 requirements--set--out--in--subsection--3,--a--master's--degree--conferred
8 by--a--college--or--university--approved--by--the--board--and--one--year--of
9 experience,--then--only--one--year--of--experience--in--that--practice--or
10 its--equivalent--is--required. For initial issuance of a certificate
11 under this subsection, an applicant shall prove one year of
12 experience that was under the direction of a licensee and that
13 meets the requirements prescribed by the board by rule. The
14 applicant's experience must include one or more of the services
15 involving the use of accounting or auditing skills, including the
16 issuance of reports on financial statements; one or more types of
17 management advisory, financial advisory or consulting services;
18 the preparation of tax returns or the furnishing of advice on tax
19 matters or the equivalent of one or more of the previous
20 requirements. To the extent the applicant's experience is as an
21 auditor engaged in the examination of financial statements for
22 the Department of Audit or as a revenue agent or similar position
23 engaged in the examination of personal and corporate income tax
24 returns for the Bureau of Taxation, the applicant receives credit
25 at the rate of 50% toward the experience required by this
26 subsection. To the extent the applicant's experience is as an
27 examiner engaged in financial examinations for the Bureau of
28 Insurance, the applicant receives credit under this subsection if
29 that experience meets the following standards:

30 A. Examinations are performed in conformity with the
31 Examiners' Handbook published by the National Association of
32 Insurance Commissioners;

33 B. Working papers prepared by the examiners are in
34 conformity with generally accepted auditing standards and
35 are subject to a review by a supervisor who must be a
36 certified public accountant;

37 C. Written reports of examination are prepared in
38 conformity with the Examiners' Handbook published by the
39 National Association of Insurance Commissioners. All
40 examiners working on the examinations must participate in
41 the preparation of the report;

42 D. Reports of examination are prepared in accordance with
43 statutory accounting principles. All examiners working on
44 the examinations must participate in the preparation of the
45 financial statements and corresponding note disclosures; and
46
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2 E. All examiners assigned to an examination must
4 participate in the planning of the examination and the
planning phase conforms to the Examiners' Handbook and
generally accepted auditing standards.

6 Sec. 11. 32 MRSA c. 113, sub-c. V is amended by repealing the
8 subchapter headnote and enacting the following in its place:

10 **SUBCHAPTER V**

12 **CERTIFICATES AND PERMITS TO PRACTICE**

14 Sec. 12. 32 MRSA §12251, as amended by PL 1989, c. 483, Pt.
A, §4, is further amended to read:

16 **§12251. Certificates and permits to practice; individual**

18 1. **Certificates to practice; individual.** The board shall
20 grant or renew ~~permits---to---practice---public---accountancy~~
certificates to persons who make application and demonstrate
22 their qualifications, including, where applicable, the
qualifications under sections 12227 and 12228 that are in
24 accordance with this section. The holder of a certificate issued
under this section may only practice public accountancy in a firm
that holds a permit issued under section 12252.

26 2. **Duration.** ~~Permits shall be initially issued and renewed~~
28 ~~for a period of one year, but in any event shall expire on the~~
~~June 30th following issuance or renewal~~ Certificates are
30 initially issued on a rotating basis for periods of not more than
3 years. From the pool of candidates, 1/3 of the certificates
32 are issued for one year; 1/3 for 2 years and 1/3 for 3 years and
expire on the June 30th following the date of issuance or
34 renewal. All renewals are for 3 years.

36 Applications for ~~these permits shall~~ certificates must be made in
38 that such form, and in the case of applications for renewal,
the board shall grant or deny any such application no later than 60
40 days after the application is filed in proper form. ~~In any case~~
42 where When the applicant seeks the opportunity to show that
issuance or renewal of a ~~permit~~ certificate was mistakenly denied
44 or where when the board is not able to determine whether it
should be granted or denied, the board may issue to the applicant
46 a provisional ~~permit~~ certificate, ~~which shall expire that expires~~
90 days after its issuance or when the board determines whether
48 or not to issue or renew the ~~permit~~ certificate for which
application was made, whichever shall occurs first ~~occurs~~.

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

4 A. That he the applicant holds a valid certificate; and

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

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

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

22 B. The applicant:

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

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

32 (3) Had 4 5 years of experience outside of this State
33 in the practice of public accountancy or meets
34 equivalent meeting requirements prescribed by the board
35 by rule, after passing the examination upon which his
36 the certificate was based and within the 10 years
37 immediately preceding his the application; and

40 C. ~~The applicant meets the requirements of subsection 3,~~
41 ~~paragraph B,~~ has had experience in the practice of public
42 accountancy meeting the requirements of section 12228,
43 subsection 10; and

44 D. If the applicant's certificate, license or permit was
45 issued more than 4 years prior to the application for
46 issuance of an initial certificate under this section, that
47 the applicant has fulfilled the requirements of continuing
48 professional education that would have been applicable under
49 subsection 5.

2 **5. Renewal.** An applicant for renewal of a permit under
3 this section shall show that requirements of continuing
4 professional education consisting of not less than 12 hours in
5 each one year period and not less than 72 hours in any 3 year
6 period have been fulfilled. The board shall establish by rule
7 the number of hours of continuing professional education required
8 in each one year period and 3 year period and shall not require
9 more than 120 hours in each 3 year period. That education shall
10 consist of the general kinds and in such subjects as shall have
11 been specified by the board by rule. The board may provide by
12 rule that fulfillment of continuing professional education
13 requirements of other states will be accepted in lieu of the
14 foregoing. The board may also provide by rule for prorated
15 continuing professional education requirements to be met by
16 applicants whose initial permits were issued less than one year
17 prior to the renewal date. The board may prescribe by rule
18 special lesser continuing education requirements to be met by
19 applicants for permit renewal whose prior permits lapsed prior to
20 their applications for renewal. The board in its discretion, may
21 renew a permit to practice despite failure to furnish evidence of
22 satisfaction of requirements of continuing professional education
23 only upon condition that the applicant follow a particular
24 program or schedule of continuing professional education. In
25 issuing rules and individual orders in respect of requirements of
26 continuing professional education, the board in its discretion
27 may use and rely, among other things, upon guidelines and
28 pronouncements of recognized educational and professional
29 organizations, may prescribe for content, duration and
30 organization of courses, may take into account any impediments to
31 interstate practice of public accountancy which may result from
32 differences in those requirements in other states, and may
33 provide for relaxation or suspension of those requirements in
34 regard to applicants who certify that they do not intend to
35 engage in the practice of public accountancy. For renewal of a
36 certificate under this section, an applicant must complete a
37 total of 120 hours of continuing professional education during a
38 3-year period with no year in which the accountant earns less
39 than 20 hours. The board may prescribe by rule the content,
40 duration and organization of continuing education courses that
41 qualify for this requirement. The board may provide by rule for
42 prorated continuing professional education requirements for an
43 applicant whose initial certificate was issued substantially less
44 than 3 years before the renewal date. The board may also
45 prescribe by rule fewer certificate renewal requirements for an
46 applicant who has not completed the certificate renewal
47 requirements by the time the applicant's certificate lapses.

48 **6. Prior certification.** Applicants for initial issuance or
49 renewal of permits under this section shall list in their

2 applications all states in which they have applied for or hold
3 certificates, licenses or permits and each holder of or applicant
4 for a permit certificate under this section shall notify the
5 board in writing, within 30 days after its occurrence, of any
6 issuance, denial, revocation or suspension of a certificate,
license or permit by another state.

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

12 **8. Adjudicatory hearing.** The board shall may not refuse to
13 issue or renew a permit certificate for any reason other than
14 failure to pay a required fee, unless it has afforded the
15 licensee an opportunity for an adjudicatory hearing. The board
16 shall hold an adjudicatory hearing at the written request of any
17 person who is denied a certificate ~~or permit~~ without a hearing
18 for any reason other than failure to pay a required fee, ~~provided~~
19 ~~that as long as~~ the request for hearing is received by the board
20 within 30 days of the applicant's receipt of written notice of
21 the denial of ~~his~~ the application, the reasons for the denial of
22 ~~his~~ the application and ~~his~~ the right to request a hearing.

24 **9. Expiration; notice.** All ~~permits--shall~~ certificates
25 expire on the June 30th of--each--year following the date of
26 issuance or renewal or on such other date as the commissioner
27 determines. Notices of expiration shall must be mailed to each
28 ~~permittee's~~ certificate holder's last known address at least 30
29 days in advance of the expiration of ~~his--permit~~ the certificate.
30 The notice shall must include any requests for information
31 necessary for renewal.

32 Permits Certificates may be renewed up to 90 days after the date
33 of expiration upon payment of a late fee of \$10 in addition to
34 the renewal fee. Any person who submits an application for
35 renewal more than 90 days after the expiration date shall ~~be~~ is
36 subject to all requirements governing new applicants under this
37 chapter, in addition to fulfilling any continuing educational
38 requirements the board may ~~deem~~ determine necessary. The board
39 in its discretion, giving due consideration to the protection of
40 the public, may waive any or all requirements if that renewal
41 application is made within 2 years from the date of that
42 expiration. Any certificate holder whose employment by any
43 government agency prohibits or precludes ~~his~~ the practice of
44 public accountancy in this State, by application to the board,
45 shall ~~be~~ is excused from paying the annual permit certificate fee
46 during the period of that employment.

48 **10. Foreign designation.** The board shall issue a
49 certificate to a holder of a foreign designation, granted in a
50

2 foreign country entitling the holder of the certificate to engage
3 in the practice of public accountancy, if:

4 A. The foreign authority that granted the designation makes
5 similar provision to allow a person who holds a valid
6 certificate issued by this State to obtain the foreign
7 authority's comparable designation;

8 B. The foreign designation:

10 (1) Was duly issued by a foreign authority that
11 regulates the practice of public accountancy and the
12 foreign designation has not expired or been revoked or
13 suspended;

14 (2) Entitles the holder to issue reports upon
15 financial statements; and

16 (3) Was issued upon the basis of education,
17 examination and experience requirements established by
18 the foreign authority by law; and

19 C. The applicant:

20 (1) Received the designation, based on educational and
21 examination standards substantially equivalent to those
22 in effect in this State, at the time the foreign
23 designation was granted;

24 (2) Met the experience requirements, substantially
25 equivalent to the requirements set out in section
26 12228, subsection 10, in the jurisdiction that granted
27 the foreign designation or has completed 5 years of
28 experience in the practice of public accountancy in
29 this State; or met equivalent requirements prescribed
30 by the board by rule, within the 10 years immediately
31 preceding the application; and

32 (3) Passed a uniform qualifying examination acceptable
33 to the board on national standards and an examination
34 on the laws and code of ethical conduct in effect in
35 this State.

36 11. Jurisdictions. An applicant under subsection 10 shall
37 list in the application all jurisdictions, foreign and domestic,
38 in which the applicant has applied for or holds a designation to
39 practice public accountancy and each holder of a certificate
40 under this subsection shall notify the board in writing, within
41 30 days after its occurrence, of any issuance, denial revocation
42 or suspension of the certificate.

2 or suspension of a designation or commencement of a disciplinary
3 or enforcement action by any jurisdiction.

4 12. Board interpretation. The board has the sole authority
5 to interpret the application of the provisions of subsections 10
6 and 11.

8 **Sec. 13. 32 MRSA §12252**, as enacted by PL 1987, c. 489, §2,
9 is amended to read:

10 **§12252. Permits to practice; firms**

11
12
13 **1. Permits granted.** The board shall grant or renew permits
14 to practice public accountancy to firms that make application and
15 demonstrate their qualifications in accordance with this
16 section. A firm must hold a permit issued under this section in
17 order to practice public accountancy.

18
19 **2. Duration.** ~~Permits shall be initially issued and renewed~~
20 ~~for a period of one year, but in any event, expiring on June 30th~~
21 ~~following issuance or renewal~~ Certificates are initially issued
22 on a rotating basis for periods of not more than 3 years. From
23 the pool of candidates, 1/3 of the certificates are issued for
24 one year; 1/3 for 2 years and 1/3 for 3 years and expire on the
25 June 30th following the date of issuance or renewal. All
26 renewals are for 3 years. Applications for permits shall must be
27 made in that such form and, in the case of applications for
28 renewal, between such dates as the board may by rule specify and
29 the board shall grant or deny ~~any such~~ an application no later
30 than 60 days after the application is filed in proper form. ~~In~~
31 ~~any case when~~ When the applicant seeks the opportunity to show
32 that issuance or renewal of a permit was mistakenly denied or
33 when the board is not able to determine whether it should be
34 granted or denied, the board may issue to the applicant a
35 provisional permit, ~~which shall expire that expires~~ 90 days after
36 its issuance or when the board determines whether or not to issue
37 or renew the permit for which application was made, whichever
38 shall first occur occurs first.

39
40 **3. Individual permits required.** An applicant for initial
41 issuance or renewal of a permit to practice under this section
42 ~~shall be~~ is required to show that each partner, officer ~~or,~~
43 ~~shareholder, member or manager~~ who regularly works in this State,
44 ~~and each employee holding a certificate who regularly works in~~
45 ~~this State,~~ holds a valid ~~individual permit to practice~~
46 certificate, issued under section 12251 or the corresponding
47 provision of prior law or is a public accountant registered under
48 section 12239, and that each other partner, officer ~~or,~~
49 ~~shareholder, member or manager~~ holds a certificate and is
50 licensed to practice public accountancy in some other state.

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

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

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

26 **6-A. Quality reviews.** The board may by rule require, on
28 either a uniform or a random basis, as a condition to renewal of
permits under this section, that applicants undergo, once every 3
30 years, quality reviews conducted in such manner as the board may
specify, if any such rule:

32 A. Is adopted reasonably in advance of the time when it
34 first becomes effective;

36 B. Includes reasonable provision for compliance by an
applicant's showing that the applicant has, within the
38 preceding 3 years, undergone a quality review that is a
satisfactory equivalent to quality reviews generally
40 required pursuant to this subsection;

42 C. Requires that quality reviews under paragraph B be
subject an oversight body established or sanctioned by board
44 rule. The oversight body shall periodically report to the
board on the effectiveness of the review program under its
46 charge, and provide to the board a listing of firms that
have participated in a satisfactory quality review program;
48 and

2 D. Requires that the quality review processes under
3 paragraph B be operated in a manner designed to preserve
4 confidentiality and that neither the board nor any 3rd party
5 other than the oversight body has access to documents
6 furnished or generated in the course of the review.

7. **Adjudicatory hearing.** The board shall ~~may~~ not refuse to
8 renew a permit for any reason other than failure to pay a
9 required fee, unless it has afforded the applicant an opportunity
10 for an adjudicatory hearing. The board shall hold an
11 adjudicatory hearing at the written request of any applicant who
12 is denied a permit without a hearing for any reason other than
13 failure to pay a required fee, ~~provided that~~ as long as the
14 request for hearing is received by the board within 30 days of
15 the applicant's receipt of written notice of the denial of ~~his~~
16 the application, the reasons for the denial of ~~his~~ the
17 application and ~~his~~ the right to request a hearing.

18 **Sec. 14. 32 MRSA §12273, sub-§1, ¶¶A, C and E,** as enacted by PL
19 1987, c. 489, §2, are amended to read:

20 A. Fraud or deceit in obtaining a certificate ~~as certified~~
21 ~~public accountant, a certificate as public accountant or a~~
22 ~~permit to practice public accountancy under this chapter,~~
23 permit or registration;

24 C. Failure, on the part of a holder of a certificate or
25 permit under section 12251 or 12252 or registration under
26 section 12239 to maintain compliance with the requirements
27 for issuance or renewal of ~~that~~ the permit, certificate or
28 registration or to report changes to the board under section
29 12251, subsection 6, or 12252, subsection 6;

30 E. Dishonesty, fraud or gross negligence in the practice of
31 public accountancy or in the filing or failure to file ~~his~~
32 the licensee's own income tax returns;

33 **Sec. 15. 32 MRSA §12273, sub-§2, ¶A,** as enacted by PL 1987, c.
34 489, §2, is amended to read:

35 A. A quality review conducted in such fashion as the board
36 may specify; ~~and~~ or

37 **Sec. 16. 32 MRSA §12274, sub-§§3 and 4,** as enacted by PL 1987,
38 c. 489, §2, are amended to read:

39 **3. Discipline.** ~~In any case when~~ When the board renders a
40 decision imposing discipline against a licensee under this
41 section and section 12273, the board shall examine its records to
42 determine whether the licensee holds a certificate or a permit to
43

2 practice public accountancy in any other state; and, if so, the
3 board shall notify the board of accountancy of that other state
4 of its decision by mail within 45 days of rendering the
5 decision. The board may also furnish information relating to
6 proceedings resulting in disciplinary action to other public
7 authorities and to private professional organizations having a
8 disciplinary interest in the licensee. When a petition for
9 review has been filed pursuant to Title 5, chapter 375,
10 subchapter IV, the notification and furnishing of information
11 provided for in this subsection must wait the resolution of the
12 review and, if resolution is in favor of the licensee, no such
13 notification or furnishing of information is made.

14 **4. Board; consideration.** The board shall consider
15 applications upon suspension, revocation or refusal to renew
16 according to this subsection.

18 A. ~~In any case when~~ When the board has suspended or revoked
19 a certificate or a permit or refused to renew a permit, the
20 board may modify the suspension or reissue the certificate
21 ~~or~~ permit or registration upon application in writing by
22 the person or firm affected and for good cause shown.

24 B. The board shall by rule specify the manner in which
25 those applications shall must be made, the times within
26 which they shall must be made and the circumstances in which
27 hearings ~~will be~~ are held.

28 C. Before reissuing or terminating the suspension of a
29 certificate or permit under this section, and as a condition
30 for reissuance or termination of suspension, the board may
31 require the applicant to show successful completion of
32 specified continuing professional education. The board may
33 make the reinstatement of a certificate ~~or~~ permit or
34 registration conditional and subject to satisfactory
35 completion of a quality review conducted in such fashion as
36 the board may specify.

38 **Sec. 17. 32 MRSA §12275, sub-§1,** as enacted by PL 1987, c.
40 489, §2, is amended to read:

42 **1. Issuance of reports.** No A person or firm not holding a
43 valid permit issued under section 12251 or 12252 may not issue a
44 report, including reviews and compilations, on financial
45 statements of any other person, firm, organization or
46 governmental unit. This prohibition does not apply to the
47 following:

48 A. An officer, partner, member, manager or employee of any
50 firm or organization affixing his a signature to any

2 statement or report in reference to the financial affairs of
that firm or organization with any wording designating the
4 position, title or office that he the person holds in the
organization;

6 B. Any act of a public official or employee in the
performance of his that person's duties as such; or

8 C. The performance by any person of other services
10 involving the use of accounting skills, including the
12 preparation of tax returns, management advisory or
consulting services, ~~the preparation of tax returns, the~~
14 ~~furnishing of advice on tax matters~~ and the preparation of
financial statements without the issuance of reports.

16 **Sec. 18. 32 MRSA §12275, sub-§1-A** is enacted to read:

18 1-A. Prohibition; applicability. The prohibition under
20 subsection 1 is applicable to issuance by a person not holding a
valid certificate or registration or a firm not holding a valid
22 permit of a report using any form of language conventionally used
by licensees with respect to a review of financial statements or
a compilation of financial statements.

24 **Sec. 19. 32 MRSA §12275, sub-§3, ¶B**, as enacted by PL 1987, c.
26 489, §2, is amended to read:

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

30 **Sec. 20. 32 MRSA §12275, sub-§§6 and 7**, as enacted by PL 1987,
32 c. 489, §2, are amended to read:

34 **6. Similar titles prohibited.** No A person or firm not
36 holding a valid permit issued under section 12251 or 12252 may
not assume or use the title or designation "certified
38 accountant," "chartered accountant," "enrolled accountant,"
"licensed accountant," "registered accountant," "accredited
40 accountant" or any other title or designation likely to be
confused with the titles "certified public accountant," "public
42 accountant" or use any of the abbreviations "CA," "LA," "RA,"
"AA" or similar abbreviations likely to be confused with the
44 abbreviations "CPA" or "PA," provided except that a holder of a
certificate who does not also hold a permit may use the titles
46 pertaining to that certificate in any manner not prohibited by
rules promulgated adopted by the board under section 12214,
48 subsection 4. The title "enrolled agent" or "EA" may only be
used by individuals so designated by the Internal Revenue Service.

2 **7. Similar designation prohibited.** No A person or firm not
3 holding a valid permit issued under section 12251 or 12252 may
4 not assume or use any title or designation that includes the
5 words "accountant," "auditor" or "auditing" "accounting" in
6 connection with any other language, including the language of a
7 report, that implies that the person or firm holds such a
8 certificate, permit or registration or has special competence as
9 an accountant or auditor, provided except that this subsection
10 does not prohibit any officer, partner or employee of any firm or
11 organization from affixing his that person's signature to any
12 statement in reference to the financial affairs of that firm or
13 organization with any wording designating the position, title or
14 office that he that person holds in the firm or organization or
15 prohibit any act of a public official or employee in the
16 performance of his that person's duties.

17 **Sec. 21. 32 MRSA §12275, sub-§8,** as enacted by PL 1987, c.
18 489, §2, is repealed and the following enacted in its place:

19 **8. Unauthorized practice.** A holder of a certificate issued
20 under section 12251 or a registration issued under section 12239
21 may not practice public accountancy in any firm that does not
22 hold a valid permit issued under section 12252.

23 **Sec. 22. 32 MRSA §12275, sub-§§9 and 10,** as enacted by PL 1987,
24 c. 489, §2, are amended to read:

25 **9. Form of firm.** No A person or firm holding a permit may
26 not engage in the practice of public accountancy using a
27 professional or firm name or designation that is misleading about
28 the legal form of the firm, about the persons who are partners,
29 officers, members or managers or shareholders of the firm or
30 about any other matter, provided except that the names of one or
31 more former partners, members or managers or shareholders may be
32 included in the name of a firm or its successor.

33 **10. Foreign practice.** Subsections 1 to 11 do not apply to
34 a person or firm holding a certificate, designation, degree or
35 license granted in a foreign country entitling the holder to
36 engage in the practice of public accountancy or its equivalent in
37 that country, whose activities in this State are limited to the
38 provision of professional services to persons or firms who are
39 residents of, governments of or business entities of the country
40 in which he the person holds that entitlement, who issues no
41 reports with respect to the financial statements of any other
42 persons, firms or governmental units in this State, and who does
43 not use in this State any title or designation other than the one
44 under which he the person practices in that country, followed by
45 a translation of that title or designation into the English

2 language, if it is in a different language and by the name of
3 that country.

4 **Sec. 23. 32 MRSA §12277**, as enacted by PL 1987, c. 489, §2,
5 is repealed and the following enacted in its place:

6 **§12277. Penalties**

7
8 If the board determines that a person or firm has knowingly
9 engaged in acts or practices that constitute a violation of
10 section 12275, the board may bring its information to the
11 attention of the Attorney General who may cause appropriate
12 criminal proceedings to be brought against a person or firm.

13
14 A person or firm who knowingly violates any provision of
15 section 12275 commits a Class D crime.

16
17 **Sec. 24. 32 MRSA §12279**, as enacted by PL 1987, c. 489, §2,
18 is amended to read:

19 **§12279. Confidential communications**

20
21 Except by permission of the client engaging a licensee under
22 this chapter, or the heirs, successors or personal
23 representatives of that client, a licensee or any partner,
24 officer, member, manager, shareholder or employee of a licensee
25 shall may not voluntarily disclose information communicated to
26 him the licensee by the client relating to, and in connection
27 with, services rendered to the client by the licensee in the
28 practice of public accountancy. That information shall--be is
29 considered confidential, provided except that nothing may be
30 construed as prohibiting the disclosure of information required
31 to be disclosed by the standards of the public accounting
32 profession in reporting on the examination of financial
33 statements or as prohibiting disclosures in court proceedings,
34 investigations or proceedings under section 12273 or Title 5,
35 chapter 375, subchapter IV, in ethical investigations conducted
36 by private professional organizations or in the course of quality
37 reviews.

38
39 **Sec. 25. 32 MRSA §12280, sub-§1**, as enacted by PL 1987, c.
40 489, §2, is amended to read:

41
42 **1. Records; property of licensee.** All statements, records,
43 schedules, working papers and memoranda made by a licensee or a
44 partner, shareholder, officer, director, member or manager or
45 employee of a licensee, incident to, or in the course of,
46 rendering services to a client in the practice of public
47 accountancy, except the reports submitted by the licensee to the
48 client and except for records that are part of the client's
49

2 records, ~~shall be and~~ remain the property of the licensee in the
3 absence of an express agreement between the licensee and the
4 client to the contrary. No A statement, record, schedule,
5 working paper or memorandum may not be sold, transferred or
6 bequeathed, without the consent of the client or his the client's
7 personal representative or assignee, to anyone other than one or
8 more surviving partners or stockholders, members or new partners
9 or stockholders or new members of the licensee or any combined or
10 merged firm or successor in interest to the licensee. Nothing in
11 this section may be construed as prohibiting any temporary
12 transfer of working papers or other material necessary in the
13 course of carrying out quality reviews or as otherwise
14 interfering with the disclosure of information pursuant to
15 section 12279.

16 **Sec. 26. 32 MRSA §12280, sub-§2, ¶B,** as enacted by PL 1987, c.
17 489, §2, is amended to read:

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

24 **Sec. 27. 32 MRSA §12280, sub-§2, ¶C** is enacted to read:

25 C. Nothing in this section requires a licensee to keep any
26 working paper beyond the period prescribed in any applicable
27 laws.

28 **Sec. 28. 32 MRSA §§12281 and 12282** are enacted to read:

29 **§12281. Privacy of contract**

30 This section governs any action based on negligence brought
31 against any accountant or firm of accountants practicing in this
32 State by any person or entity claiming to have been injured as a
33 result of financial statements or other information examined,
34 compiled, reviewed, certified, audited or otherwise reported or
35 opined on by the defendant accountant or in the course of an
36 engagement to provide other public accountancy services.

37 **1. Action brought.** An action covered by this section may
38 not be brought unless:

39 A. The plaintiff is issuer or successor of the issuer of
40 the financial statements or other information examined,
41 compiled, reviewed, certified, audited or otherwise reported
42 or opined on by the defendant and engaged the defendant

2 accountant to examine, compile, review, certify, audit or
3 otherwise report or render an opinion on such financial
4 statements or to provide other public accountancy services;
5 or

6 B. The defendant accountant or firm:

8 (1) Was aware at the time the engagement was
9 undertaken that the financial statements or other
10 information were available for use in connection with a
11 specified transaction by the plaintiff who was
12 specifically identified to the defendant accountant;

14 (2) Was aware that the plaintiff intended to rely upon
15 such financial statements or other information in
16 connection with the specified transaction; and

18 (3) Had direct contact and communication with the
19 plaintiff and expressed by words or conduct the
20 defendant accountant's understanding of the reliance on
21 such financial statements or other information.

24 **SUMMARY**

26 This bill amends the public accounting laws.