

# MAINE STATE LEGISLATURE

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# 118th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1997

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Legislative Document

No. 1430

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S.P. 456

In Senate, March 11, 1997

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### An Act to Regulate Professional Loggers.

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Reference to the Committee on Agriculture, Conservation and Forestry 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 KILKELLY of Lincoln.  
Cosponsored by Representative: SPEAR of Nobleboro.

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

2  
4           **Sec. 1. 5 MRSA §12004-A, sub-§21-A** is enacted to read:

6           **21-A.** Maine State Board    \$30/DAY           32 MRSA §5313  
7                   of Licensure for  
8                   Professional  
9                   Loggers

10           **Sec. 2. 32 MRSA c. 76** is enacted to read:

12                                   **CHAPTER 76**

14                                   **PROFESSIONAL LOGGERS**

16           **§5311. Use of title**

18           Except as specifically authorized, a person may not engage  
19           in the practice of logging as defined in section 5312 or in any  
20           manner advertise or hold the person out as engaged in such  
21           practice, without first being licensed as a licensed professional  
22           logger under this chapter. This chapter may not be construed as  
23           preventing or prohibiting a person or direct family member from  
24           logging or otherwise conducting logging practices on land owned  
25           or leased by that person. A person who does not earn more than  
26           25% of that person's income from timbering operations is exempt  
27           from the licensing requirements under this chapter.

28           **§5312. Definitions**

30           As used in this chapter, unless the context otherwise  
31           indicates, the following terms have the following meanings.

34           **1. Board.** "Board" means the Maine State Board of Licensure  
35           for Professional Loggers.

36           **2. Licensed professional logger.** "Licensed professional  
37           logger" means a person who is licensed under the provisions of  
38           this chapter.

40           **3. Practice of logging.** "Practice of logging" means any  
41           professional services relating to timbering operations requiring  
42           the application of timber principles and techniques. The  
43           services include, but are not limited to, the severing of trees  
44           and hauling from the stump, trees for lumber, fuelwood, pulpwood  
45           or any merchantable product, and the clearing of land, for wages  
46           or salary. Logging instructional and educational activities  
47           conducted by institutions approved by the Commissioner of  
48           Education pursuant to the laws of the State and logging  
49           instructional and educational activities relative to a program of  
50           instructional and educational activities relative to a program of

2 education at an institution licensed or approved by the State are  
3 exempt from the provisions of this chapter. "Practice of  
4 logging" does not include services rendered for any advice or  
5 trucking from the woods of forest products.

6 4. **Timbering operations.** "Timbering operations" means  
7 activities directly related to the severing or removal of  
8 standing trees from the forest as a raw material for commercial  
9 processes or purposes. For the purposes of this chapter,  
10 "timbering operations" does not include the severing of  
11 evergreens grown for and severed for the traditional Christmas  
12 holiday season, nor the severing of trees incidental to  
13 ground-disturbing construction activities, including construction  
14 of well sites, access roads and gathering lines for oil and  
15 natural gas operators, nor the severing of trees for constructing  
16 or maintaining rights-of-way for public highways or public  
17 utilities or any company subject to the jurisdiction of the  
18 Federal Energy Regulatory Commission unless the trees severed are  
19 being sold or provided as raw material for commercial wood  
20 product purposes, nor the severing of trees by an individual on  
21 the individual's own property for the individual's use if the  
22 individual does not have the severing done by a person whose  
23 business is the severing or removal of trees.

24 **§5313. Maine State Board of Licensure for Professional**  
25 **Loggers; establishment; compensation**

26  
27  
28 1. **Establishment.** The Maine State Board of Licensure for  
29 Professional Loggers within the Department of Professional and  
30 Financial Regulation, as established by Title 5, section 12004-A,  
31 subsection 21-A, shall administer the provisions of this chapter.

32  
33  
34 2. **Members.** The board consists of 5 professional loggers  
35 currently certified by a loggers' association in the State and  
36 one public member, who are selected and appointed by the  
37 Governor. Of the 5 members, 2 may not employ more than 5  
38 individuals in their logging business.

39  
40 3. **Terms of office.** Appointments are for 3 years, except  
41 that no more than one logger member's term may expire in any one  
42 calendar year and appointments for terms of less than 3 years may  
43 be made to comply with this limitation. Upon expiration of a  
44 member's term, the member shall serve until a successor is  
45 appointed and qualified. The successor's term is 3 years from  
46 the date of expiration regardless of the date of appointment. A  
47 person may not serve more than 2 full consecutive terms. A  
48 period actually served that exceeds 1/2 of the 3-year term is  
49 considered a full term. Appointments of members must comply with  
50 section 60.

2           4. Removal of board members; vacancies. The Governor may  
3           remove any board member for cause. A vacancy in membership of  
4           the board must be filled for the unexpired term in the same  
5           manner as for the original appointment.

6  
7           5. Compensation and expenses of board members. Members of  
8           the board are eligible for compensation in accordance with the  
9           provisions of Title 5, chapter 379.

10  
11           6. Meetings; quorum. The board shall meet at least once a  
12           year to conduct its business and elect its officers. Additional  
13           meetings may be held as necessary to conduct the business of the  
14           board and may be convened at the call of the chair or a majority  
15           of the board members. The board shall elect a chair, a  
16           vice-chair and a secretary annually. Four members of the board  
17           constitute a quorum for all purposes.

18           **§5314. Powers and duties of board**

19           The board has the following powers and duties in addition to  
20           those otherwise set forth in this chapter.

21  
22           1. Licenses; enforcement. The board shall evaluate the  
23           qualifications of applicants for licensure under this chapter and  
24           shall cause to be investigated all complaints made to it and all  
25           cases of noncompliance with this chapter.

26  
27           2. Rules. The board may, in accordance with the Maine  
28           Administrative Procedure Act, adopt such rules as may be  
29           reasonably necessary for the proper performance of its duties and  
30           the administration of this chapter. These rules are routine,  
31           technical rules as defined in Title 5, chapter 375, subchapter  
32           II-A. The board may not adopt rules on forest practices, but  
33           may, under this chapter, proceed against any person for alleged  
34           violations of any rules or laws adopted by the Legislature or any  
35           other duly authorized body or agency relating to logging.

36  
37           3. Hearings. Hearings may be conducted by the board to  
38           assist with investigations, to determine whether grounds exist  
39           for suspension, revocation or denial of a license or as otherwise  
40           necessary to the fulfillment of its responsibilities under this  
41           chapter. The board may not refuse to renew a license for any  
42           reason other than failure to pay a required fee, unless it has  
43           afforded the licensee an opportunity for an adjudicatory  
44           hearing. The board shall hold an adjudicatory hearing at the  
45           written request of any person who is denied a license without a  
46           hearing for any reason other than failure to pay a required fee,  
47           provided that the request for hearing is received by the board  
48           within 30 days of the applicant's receipt of written notice of  
49  
50

2 the denial of the applicant's application, the reasons for the  
3 denial of the application and the applicant's right to request a  
4 hearing. Hearings must be conducted in accordance with the Maine  
5 Administrative Procedure Act to the extent applicable. The board  
6 may subpoena witnesses, records and documents in any hearing it  
7 conducts.

8 4. Disciplinary action. The board may take disciplinary  
9 action following an investigation. If a violation of any law or  
10 rule established pursuant to this chapter is determined, the  
11 board may take one or more of the disciplinary actions under  
12 Title 10, section 8003.

13 5. Records. The board shall keep such records and minutes  
14 as are necessary to the ordinary dispatch of its functions.

15 6. Reports; limitations. On or before August 1st of each  
16 year, the board shall submit to the Commissioner of Professional  
17 and Financial Regulation, for the preceding fiscal year ending  
18 June 30th, an annual report of its operations and financial  
19 position, together with such comments and recommendations as the  
20 board considers essential.

21 **§5315. Receipts and disbursements**

22 All fees received by the board under this chapter must be  
23 used to carry out the purposes of this chapter. Any balance of  
24 these fees may not lapse, but must be carried forward as a  
25 continuing account to be expended for the same purposes in the  
26 following fiscal years.

27 **§5316. Licensing**

28 1. Licensing. Unless specifically exempted by this  
29 chapter, a person may not profess to be a professional logger  
30 unless licensed in accordance with this chapter.

31 2. Individual licensing. Licensure must be determined upon  
32 a basis of individual and personal qualifications. Only an  
33 individual may be licensed under this chapter.

34 **§5317. General requirements for licensure**

35 The minimum qualifications and requirements for licensure as  
36 a licensed professional logger are as follows.

37 1. Internship. Beginning January 1, 1999, completion of a  
38 2-year internship under the guidance of a licensed professional  
39 logger is required. The internship must occur after completion  
40 of at least one week of the approved curriculum as specified by  
41 the board.

2 the board. A certified technical educational course may be  
3 substituted for the internship. The internship is not required  
4 for applicants who have graduated from an approved 2-year  
5 curriculum and have completed at least 2 years of experience in  
6 logging work of a character satisfactory to the board. Interns  
7 shall register with the board before beginning their internship.  
8 The board shall specify the guidelines for the internship through  
9 routine, technical rules as defined in Title 5, chapter 375,  
10 subchapter II-A.

11 2. Examination. Beginning January 1, 1999, successful  
12 completion of a written examination, the content of which is  
13 determined by the board, is required. Examinations must be given  
14 at least twice each year. The board shall set a fee for the  
15 examination. In some circumstances, as determined by the board,  
16 an oral examination may be substituted for the written  
17 examination. A person who is licensed on or before January 1,  
18 1999 is not required to complete the examination as a condition  
19 for continuing licensure. An applicant must have met all other  
20 qualifications for licensure before taking the examination.

21 3. Grandfathering. Until January 1, 1999, an applicant who  
22 can show that the applicant earns at least 25% of the applicant's  
23 income from logging must be granted a license.

#### 24 **§5318. Application**

25 An application for licensure must be made on forms  
26 prescribed and furnished by the board, must contain statements  
27 made under oath as to the applicant's residence, education and  
28 technical experience, and must contain the names of not fewer  
29 than 5 references, 3 or more of whom must be loggers having  
30 personal or professional knowledge of the applicant's  
31 experience. Notwithstanding any other provision of law,  
32 consideration of any communications solicited or received by the  
33 board as references may be conducted in executive session.

#### 34 **§5319. Fees**

35 1. Application fee. An application for licensure must be  
36 accompanied by a fee of \$25.

37 2. Licensure fee. The board shall establish an annual  
38 licensure fee in an amount reasonable and necessary for its  
39 purpose, but not less than \$40 nor more than \$55.

40 3. Nonrefundability. Fees are nonrefundable and must be  
41 paid before the issuance or renewal of the license.

42 4. Failure to remit. If an applicant fails to remit the

2 licensure fee within 30 days after being notified by certified  
3 mail that the applicant's application has been accepted, the  
4 applicant forfeits the right to be issued a license and the  
5 applicant may be required to again submit an original application.

6 **§5320. Issuance of license; endorsement of documents**

8 The board shall issue a license upon payment of the  
9 licensure fee as provided in section 5319 to an applicant who, in  
10 the opinion of the board, has satisfactorily met all the  
11 requirements of this chapter. A license must show the full name  
12 of the licensee. The issuance of a license by the board is  
13 evidence that the person named on the license is entitled to the  
14 rights and privileges of a licensed professional logger while the  
15 license remains unrevoked or unexpired. Contracts and reports  
16 issued by the licensee must be endorsed with the licensee's name  
17 and license number during the life of the license, but it is a  
18 Class E crime for a person to endorse any document with that name  
19 and license number after the license of the licensee named has  
20 expired or has been revoked or suspended, unless the license has  
21 been renewed or reissued. A licensed professional logger commits  
22 a Class E crime if that logger endorses any contract or report,  
23 unless that logger actually prepared or was actually in charge of  
24 the preparation of the contract or report.

26 **§5321. Term of license**

28 The Department of Professional and Financial Regulation,  
29 Division of Licensing and Enforcement shall compile and maintain  
30 a complete and up-to-date list of all licensed loggers in the  
31 State. The list must be made available to any person upon  
32 request at cost.

34 **1. Annual renewal.** A license expires on December 31st, or  
35 as designated by the Commissioner of Professional and Financial  
36 Regulation, following the issuance or renewal of the license and  
37 becomes invalid on that date unless renewed. The Division of  
38 Licensing and Enforcement shall notify, at the last known  
39 address, every person licensed under this chapter of the date of  
40 the expiration of the license and the amount of the fee required  
41 for its renewal. The notice must be mailed at least one month in  
42 advance of the date of the expiration of that license.

44 Renewal of a license may be effected at any time during the month  
45 of renewal of the year in which the license is due for renewal by  
46 payment of the renewal fee fixed by the board. A license may be  
47 renewed up to 90 days after the date of expiration upon payment  
48 of a late fee of \$10 in addition to the renewal fee. A person  
49 who submits an application for renewal more than 90 days after  
50 the license renewal date is subject to all requirements governing



2 new applicants under this chapter. The board shall make an  
3 exception to the foregoing renewal provision in the case of a  
4 person who is in the Armed Services of the United States.

5 2. Continuing education and supervision. The board may  
6 establish by rule continuing education and supervision  
7 requirements. An applicant for renewal of a license must show  
8 proof of satisfying the continuing education requirements  
9 established by the board. Rules adopted pursuant to this  
10 subsection are routine, technical rules as defined in Title 5,  
11 chapter 375, subchapter II-A.

12 **§5322. Disciplinary action grounds; procedure; complaints**

13 1. Grounds. The board may, pursuant to Title 5, section  
14 10004, revoke or suspend the license of a professional logger.  
15 In addition, the board may refuse to issue or renew the license,  
16 or the Administrative Court may, pursuant to Title 4, chapter 25,  
17 revoke, suspend or refuse to renew the license, of a professional  
18 logger who has been found guilty of any deceit, misconduct,  
19 misrepresentation, fraud, incompetence or gross negligence in the  
20 professional logger's practice, has been found guilty of any  
21 fraud or deceit in obtaining a license, aids and abets any person  
22 in perpetration of an alleged fraud in violation of any  
23 provisions of this chapter or fails in any material respect to  
24 comply with the provisions of this chapter.

25 2. Procedure. Except as provided in Title 5, section  
26 10004, a license may not be denied, suspended, revoked or refused  
27 for renewal for the reasons in subsection 1 without prior written  
28 notice and opportunity for hearing on that denial, suspension or  
29 revocation. The burden of proof is on the board in any  
30 proceeding to suspend or revoke a license. A license may not be  
31 denied, suspended or revoked under this section except by  
32 majority vote of the board.

33 3. Complaints. Any person may register a complaint of  
34 fraud, deceit, gross negligence, incompetency or misconduct  
35 against any licensee. The complaint must be in writing, be sworn  
36 to by the person making it and be filed with the board. The  
37 board may designate a person or persons to investigate and report  
38 to it upon the complaint. The person or persons designated are  
39 reimbursed for expenses in the same manner as prescribed for the  
40 board in Title 5, section 12004-A, subsection 21-A. A person  
41 aggrieved by final board action is entitled to judicial review of  
42 the action in Superior Court in the manner provided in Title 5,  
43 chapter 375, subchapter VII.

44 The board, for reasons it determines sufficient, may reissue  
45 a license to a licensee whose license has been revoked, provided  
46 the licensee has satisfied the requirements of this chapter.

2 that 4 or more members of the board vote in favor of reissuance.  
3 A new license to replace any license revoked, lost, destroyed or  
4 mutilated may be reissued, subject to the rule of the board, and  
5 the board shall set a charge for such reissuance.

6 **§5323. Violations and penalties**

7 It is unlawful for a person to practice logging or offer to  
8 practice logging or to use in connection with the person's name,  
9 or otherwise assume, use or advertise, any title or description  
10 that directly or indirectly conveys the impression that the  
11 person is a licensed professional logger in this State unless the  
12 person is licensed or exempt in accordance with the provisions of  
13 this chapter. A person who presents, or attempts to use as the  
14 person's own, the license of another, a person who gives false or  
15 forged evidence to the board in obtaining a license, a person who  
16 attempts to use an expired, suspended or revoked license or any  
17 person, firm, partnership or corporation who violates any  
18 provision of this chapter is guilty of a Class E crime for each  
19 offense. The board, or any person or persons designated by the  
20 board to act on its behalf, is empowered to prefer charges for  
21 any violation of this chapter in any court of competent  
22 jurisdiction in any county in the State in which the violation  
23 occurred. Duly constituted officers of the law of the State, or  
24 of any political subdivisions of the State, shall enforce the  
25 provisions of this chapter and prosecute any persons, firms,  
26 partnerships or corporations violating them. The Attorney  
27 General shall act as legal advisor to the board and render such  
28 legal assistance as may be necessary in carrying out the  
29 provisions of this chapter.

30 The State may bring an action in Superior Court to enjoin  
31 any person from violating this chapter, regardless of whether  
32 proceedings have been or may be instituted in the Administrative  
33 Court or whether criminal proceedings have been or may be  
34 instituted.

35 **§5324. Reciprocity**

36 Upon application, a person residing in another state or  
37 country who can show that the person earns more than 25% of that  
38 person's income from timbering operations must be granted a  
39 license until January 1, 1999.

40 On or after January 1, 1999, a person who is not a resident  
41 of and does not have an established place of business in the  
42 State, or who has recently become a resident of the State, may  
43 not practice or offer to practice logging nor use the title  
44 "licensed professional logger," unless that person is legally  
45 licensed as a logger in the person's own state or country and has  
46 the license in that state or country.

2 submitted evidence to the board that the person is so licensed,  
4 the state or country in which the person is licensed observes the  
6 same rules of reciprocity in regards to persons licensed under  
8 the provisions of this chapter and the state or country in which  
10 the person is licensed has substantially equivalent requirements  
12 for licensure as set forth in this chapter. The board shall make  
14 a determination that the requirements for licensure of another  
16 state or country are substantially equivalent. A person  
18 practicing as a licensed professional logger under the provisions  
20 of this section shall show proof to the board each calendar year  
22 of the person's continued licensure as a licensed professional  
24 logger in another state.

#### 14 SUMMARY

16 This bill establishes the Maine State Board of Licensure for  
18 Professional Loggers. This board is the regulatory body for the  
20 profession.

22 To qualify for licensure, a person must complete a 2-year  
24 internship under the guidance of a licensed logger unless the  
26 person has graduated from an approved 2-year curriculum and has  
28 completed at least 2 years of experience in logging work.  
Applicants must also have passed the written examination approved  
by the board. Licenses will be issued for those persons  
currently earning 25% of their personal income from logging until  
January 1, 1999.

30 The annual licensing fee is determined by the board, but is  
32 not to exceed \$55 annually.

34 Any joint standing committee of the Legislature that  
36 recommends to the Legislature the regulation of an occupational  
profession not previously regulated must include an evaluation of  
the need for regulation pursuant to the Maine Revised Statutes,  
Title 5, section 12015, subsection 3.