

# MAINE STATE LEGISLATURE

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# 119th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1999

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Legislative Document

No. 1981

S.P. 706

In Senate, March 23, 1999

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### An Act to Revise the Accountancy Laws.

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

A handwritten signature in cursive script, reading "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator HARRIMAN of Cumberland.  
Cosponsored by Senators: DOUGLASS of Androscoggin, MacKINNON of York,  
Representative: BOLDUC of Auburn.

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

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Sec. 1. 32 MRSA §12201, sub-§3-A is enacted to read:

3-A. Defined service. For purposes of section 12275, subsections 12 and 13, "defined service" means providing the following services:

A. Any audit or other engagement to be performed in accordance with the Statements on Auditing Standards, SAS;

B. Any review of a financial statement or compilation of a financial statement to be performed in accordance with the Statement on Standards for Accounting and Review Services, SSARS; or

C. Any examination of prospective financial information to be performed in accordance with the Statement on Standards for Attestation Engagements, SSAE.

The statements on standards specified in this definition are those developed for general application by recognized national accountancy organizations.

Sec. 2. 32 MRSA §12201, sub-§12 is enacted to read:

12. Substantial equivalency. "Substantial equivalency" is a determination by the board that the education, examination and experience requirements for certified public accountants contained in the statutes and administrative rules of another jurisdiction are comparable to or exceed the education, examination and experience requirements of the board or that an individual certified public accountant's education, examination and experience qualifications are comparable to or exceed the education, examination and experience requirements of the board.

Sec. 3. 32 MRSA §12213, as amended by PL 1993, c. 600, Pt. A, §264, is further amended to read:

**§12213. Appointment**

The Board of Accountancy, as established by Title 5, section 12004-A, subsection 1, within the Department of Professional and Financial Regulation consists of 5 6 members appointed by the Governor. Each member of the board must be a citizen of the United States and a resident of this State. ~~Three~~ Four members must be holders of certificates issued under ~~section-12227~~ this chapter and of currently valid permits issued under ~~section-12251~~ this chapter and must have had, as their principal occupation, active practice as ~~certified--public--accountants~~ certificate holders for at least the 5 preceding years. At least 3 of these 4 members must be holders of certificates issued under section

12227 and of currently valid permits issued under section 12251.  
2 ~~One member must hold a certificate issued under section 12239 and~~  
3 ~~a currently valid permit issued under section 12251 and must have~~  
4 ~~had, as a principal occupation, active practice as a noncertified~~  
5 ~~public accountant for at least the 5 preceding years.~~ One member  
6 Two members of the board must be a representative representatives  
7 of the public. Appointments are for 3-year terms. Appointments  
8 of members must comply with section 60. The Governor may remove  
9 a member of the board for cause.

10 **Sec. 4. 32 MRSA §12228, sub-§3**, as amended by PL 1997, c. 265,  
11 §2, is further amended to read:

12 **3. Education requirement.** The education requirement for a  
13 certificate, which must be met ~~before an applicant is eligible to~~  
14 ~~apply no later than 120 days after an applicant sits~~ for the  
15 examination prescribed in subsection 4, is as follows:

16 **A.** During the 5-year period immediately following October  
17 1, 1997, a baccalaureate degree or its equivalent conferred  
18 by a college or university acceptable to the board; and

19 **B.** After October 1, 2002, at least 150 semester hours of  
20 education, including a minimum 4-year baccalaureate or  
21 higher degree conferred by a college or university  
22 acceptable to the board, the total educational program to  
23 include basic courses in accounting and auditing determined  
24 to be appropriate under board rules. Rules adopted by the  
25 board pursuant to this paragraph are routine technical rules  
26 as defined in Title 5, chapter 375, subchapter II-A; and

27 **C.** An examination applicant who expects to meet the  
28 education requirement within 120 days following the  
29 examination is eligible to take the examination. Grades may  
30 not be released, nor may credit for the examination or any  
31 part of the examination be given to the applicant unless the  
32 education requirement is completed within 120 days following  
33 the examination or within such time as the board in its sole  
34 discretion may determine.

35 **Sec. 5. 32 MRSA §12228, sub-§4**, as amended by PL 1997, c. 265,  
36 §3, is further amended to read:

37 **4. Examination; administration.** The examination to be  
38 passed as a condition for the granting of a certificate must be  
39 in writing or in electronic form, must be held twice a year and  
40 must test the applicant's knowledge of the subjects of accounting  
41 and auditing and such other related subjects as the board may  
42 specify by rule. Rules adopted pursuant to this section are  
43 routine technical rules as defined in ~~the Maine Administrative~~  
44 ~~Procedure Act~~, Title 5, chapter 375, subchapter II-A. The time  
45 for holding the examination must be fixed by the board and may be  
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2 changed from time to time. The board shall prescribe by rule the  
3 methods of applying for and conducting the examination, including  
4 methods for grading papers and determining a passing grade  
5 required of an applicant for a certificate, except that the  
6 board, to the extent possible, shall see to it that the grading  
7 of the examination and the passing grades are uniform with those  
8 applicable in all other states. The board may make the use of  
9 all or any part of the Uniform certified public accountant  
10 Examination and the Advisory Grading Service of the American  
11 Institute of certified public accountants or any other  
12 examination approved by the board and may contract with 3rd  
13 parties to perform such administrative services with respect to  
14 the examination as it considers appropriate to assist it in  
15 performing its duties under this section.

16 **Sec. 6. 32 MRSA §12228, sub-§§12 to 16** are enacted to read:

17 12. Substantial equivalency. The board shall determine the  
18 standards for substantial equivalency. The board may rely upon a  
19 determination by a qualification appraisal service offered by a  
20 national association of state boards of accountancy that an  
21 applicant meets the requirements for substantial equivalency.

22 13. Foreign designation. The board shall issue a  
23 certificate to a holder of a substantially equivalent foreign  
24 designation as long as:

25 A. The foreign authority that granted the designation makes  
26 similar provisions to allow a person who holds a valid  
27 certificate issued by this State to obtain that foreign  
28 authority's comparable designation;

29 B. The foreign designation:

30 (1) Was duly issued by a foreign authority that  
31 regulates the practice of public accountancy, and the  
32 foreign designation has not expired or been revoked or  
33 suspended;

34 (2) Entitles the holder to issue reports upon  
35 financial statements; and

36 (3) Was issued upon the basis of education,  
37 examination and experience requirements established by  
38 the foreign authority or by law; and

39 C. The applicant:

40 (1) Received the foreign designation, which is based  
41 on education and examination standards substantially  
42 equivalent to those in effect in this State at the time  
43 the foreign designation was granted;

- 2           (2) Completed an experience requirement, substantially  
4           equivalent to the requirement set out in subsection 10  
6           in the jurisdiction that granted the foreign  
8           designation or has completed 4 years of professional  
              experience in this State or meets equivalent  
              requirements prescribed by the board by rule within the  
              10 years immediately preceding the application; and
- 10           (3) Passed a uniform qualifying examination on  
12           national standards and an examination on the laws,  
14           regulations and code of ethical conduct in effect in  
              this State acceptable to the board.

16           14. Action by foreign jurisdiction. An applicant under  
18           subsection 13 shall in an application for a certificate list all  
20           jurisdictions, foreign and domestic, in which the applicant has  
22           applied for or holds a designation to practice public  
24           accountancy. Each holder of a certificate issued under  
              subsection 13 shall notify the board in writing, within 30 days  
              after its occurrence, of any issuance, denial, revocation or  
              suspension of a designation or commencement of a disciplinary or  
              enforcement action by any jurisdiction.

26           15. Authority. The board has the sole authority to  
              interpret the application of subsections 13 and 14.

28           Sec. 7. 32 MRSA §12229 is enacted to read.

30           §12229. Licensees offering or rendering services in another  
32           state.

34           A licensee of this State offering or rendering services or  
36           using the title, certified public account, in another state is  
38           required to register in that state and is subject to disciplinary  
40           action in this State for an act committed in another state for  
              which the licensee would be subject to discipline in the other  
              state. Notwithstanding section 12227, subsection 1, the board  
              must investigate any complaint made by a board of accountancy of  
              another state.

42           Sec. 8. 32 MRSA §12240, sub-§4, as amended by PL 1995, c. 353,  
44           §25, is further amended to read:

46           4. Examination; administration. The examination to be  
48           passed as a condition for the granting of a certificate must be  
50           in writing or in electronic form, be held twice a year and be the  
52           public accountant examination prepared by the National Society of  
              Public Accountants or any other examination approved by the  
              board. The time for holding examinations must be fixed by the  
              board and may be changed from time to time. The board shall  
              prescribe by rule the methods of applying for and conducting the

2 examinations, including methods for grading papers and  
3 determining a passing grade required of an applicant for a  
4 certificate, except that the board, to the extent possible, shall  
5 see to it that the grading of the examinations and the passing  
6 grades are uniform with those applicable in all other states.  
7 The board may contract with 3rd parties to perform those  
8 administrative services with respect to the examinations as it  
9 considers appropriate to assist it in performing its duties under  
10 this section.

11 **Sec. 9. 32 MRSA §12251, sub-§4,** as enacted by PL 1987, c. 489,  
12 §2, is amended to read:

13 **4. Out-of-state certificates; public accountants.** The  
14 board shall issue a permit to a holder of a certificate as a  
15 public accountant issued by another state upon showing that:

16  
17 A. The applicant passed the examination required for  
18 issuance of ~~his~~ the certificate with grades that would have  
19 been passing grades at the time in this State;

20  
21 B. The applicant:

22  
23 (1) Meets all current requirements in this State for  
24 issuance of a certificate at the time the application  
25 is made;

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

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

37  
38 C. The applicant meets the requirements of subsection 3,  
39 paragraph B.

40  
41 **Sec. 10. 32 MRSA §12251, sub-§4-A** is enacted to read:

42  
43 **4-A. Out-of-state certificates; certified public**  
44 **accountants; substantial equivalency.** The board shall issue a  
45 permit to a holder of a certificate as a certified public  
46 accountant issued by another state if the applicant shows that  
47 the applicant:

48  
49 **A. Is eligible under the substantial equivalency standard**  
50 **authorized pursuant to section 12228, subsection 12. The**  
51 **holder of a permit issued under this section may engage in**  
52

2 the practice of public accountancy only in a firm that holds  
3 a permit issued under section 12252; and

4 B. Consents, as a condition of the granting of this  
5 privilege:

6 (1) To the jurisdiction of the board;

7 (2) To comply with this chapter and the board's rules;  
8 and

9 (3) To the appointment of the state board that issued  
10 the applicant's certificate as the applicant's agent  
11 upon whom process may be served in any action or  
12 proceeding by this board against the applicant.

13 **Sec. 11. 32 MRSA §12251, sub-§5, as amended by PL 1989, c.**  
14 **483, Pt. A, §54, is further amended to read:**

15 **5. Renewal.** An applicant for renewal of a permit under  
16 this section shall show that requirements of continuing  
17 professional education consisting of not less than ~~12~~ 20 hours in  
18 each one-year period and not less than ~~72~~ 120 hours in any 3-year  
19 period have been fulfilled. The board shall establish by rule  
20 the number of hours of continuing professional education required  
21 in each one-year period and 3-year period ~~and shall not require~~  
22 ~~more than 120 hours in each 3-year period.~~ That education shall  
23 must consist of the general kinds and in ~~such~~ subjects ~~as shall~~  
24 ~~have been that are~~ specified by the board by rule. The board may  
25 provide by rule that fulfillment of continuing professional  
26 education requirements of other states will be accepted in lieu  
27 of the ~~foregoing~~ requirements of this subsection. The board may  
28 also provide by rule for prorated continuing professional  
29 education requirements to be met by applicants whose initial  
30 permits were issued less than one year prior to the renewal  
31 date. The board may prescribe by rule special lesser continuing  
32 education requirements to be met by applicants for permit renewal  
33 whose prior permits lapsed prior to their applications for  
34 renewal. The board, in its discretion, may renew a permit to  
35 practice despite failure to furnish evidence of satisfaction of  
36 requirements of continuing professional education only upon  
37 condition that the applicant follow a particular program or  
38 schedule of continuing professional education. In issuing rules  
39 and individual orders in respect of requirements of continuing  
40 professional education, the board in its discretion may use and  
41 rely, ~~among other things,~~ upon guidelines and pronouncements of  
42 recognized educational and professional organizations; may  
43 prescribe for content, duration and organization of courses; may  
44 take into account any impediments to interstate practice of  
45 public accountancy ~~which~~ that may result from differences in  
46 those requirements in other states; and may provide for  
47 relaxation or suspension of those requirements in regard to  
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2 applicants who certify that they do not intend to engage in the  
practice of public accountancy.

4 **Sec. 12. 32 MRSA §12251, sub-§10** is enacted to read:

6 10. Certificates in other states. An applicant for initial  
7 issuance or renewal of a permit under this section shall in the  
8 applicant's application list all states in which the applicant  
9 has applied for or holds a certificate, license or permit and  
10 list any past denial, revocation or suspension of a certificate,  
11 license or permit. Each holder of or applicant for a permit  
12 under this section shall notify the board in writing, within 30  
13 days after its occurrence, of any issuance, denial, revocation or  
14 suspension of a certificate, license or permit by another state.

16 **Sec. 13. 32 MRSA §12275, sub-§§12 and 13** are enacted to read:

18 12. Commissions; referral fees. A licensee, when  
19 performing for a client a defined service, may not receive a  
20 commission or a referral fee:

22 A. For recommending or referring to a client any product or  
23 service:

24 B. For recommending or referring any product or service to  
25 be supplied by a client; or

26 C. As a consequence of a decision by a client to purchase  
27 or supply a particular product or service.

28 Notwithstanding paragraphs A, B and C, a licensee may receive a  
29 commission or a referral fee if the licensee's compilation report  
30 discloses in writing a lack of independence.

31 This prohibition applies during the period in which the licensee  
32 is engaged to perform any of the defined services and the period  
33 covered by any historical financial statements involved in the  
34 defined services.

35 A licensee who is not prohibited by this section from receiving a  
36 commission or a referral fee shall disclose in writing to any  
37 person or entity to whom the licensee recommends or refers a  
38 product or service to which the commission or referral fee  
39 relates the fact that the licensee has been paid or expects to be  
40 paid a commission or referral fee.

41 13. Contingency fees. A licensee or a licensee's firm may  
42 not:

43 A. When involved in providing for a client a defined  
44 service:

2 (1) Perform for a contingent fee any services for a  
3 client; or

4  
5 (2) Receive a contingency fee from a client; or

6  
7 B. Prepare an original or amended tax return or claim for a  
8 tax refund for a contingent fee.

10 Notwithstanding paragraph A, a licensee when providing a defined  
11 service may receive a contingency fee if the licensee's  
12 compilation report discloses in writing a lack of independence.

14 The prohibitions apply during the period in which the licensee is  
15 engaged to perform any of the services listed in this section and  
16 the period covered by any historical financial statements  
17 involved in any of the listed services.

18 As used in this subsection a "contingent fee" or "contingency  
19 fee" means a fee established for the performance of any service  
20 pursuant to an arrangement in which no fee is charged unless a  
21 specified finding or result is attained or in which the amount of  
22 the fee is otherwise dependent upon the finding or result of the  
23 service. For purposes of this subsection, fees are not regarded  
24 as being contingent if fixed by courts or other public  
25 authorities or, in tax matters, if determined based on the  
26 results of judicial proceedings or the findings of governmental  
27 agencies. A licensee's fees may vary depending on the complexity  
28 of services rendered.

30  
31 **Sec. 14. Transition provision.** Any member on the Board of  
32 Accountancy on the effective date of this Act serves the  
33 remainder of the term to which they have been appointed.  
34

## 36 SUMMARY

37 This bill makes the following changes to accountancy law.

38  
39 1. It creates new defined terms: "defined service" and  
40 "substantial equivalency."  
41

42 2. It makes changes in the composition of the Board of  
43 Accountancy by permitting, but no longer requiring, that one of  
44 the professional members may be a public accountant and by adding  
45 a 2nd public member to the board.  
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47 3. It revises the education requirements for those eligible  
48 to sit for the certified public accountant examination by  
49 allowing applicants to sit for the examination up to 120 days  
50 prior to completion of their education requirements.  
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2           4. It authorizes the Board of Accountancy to establish a  
process for granting licenses to and regulating licensees from  
4 other states or countries that have licensing requirements  
substantially equivalent to those in Maine.

6           5. It establishes provisions concerning Maine licensees who  
offer or render services in other states.

8  
10           6. It prohibits or restricts the ability of accountants to  
accept commissions, referral fees and contingency fees when  
12 performing a defined service.