

MAINE STATE LEGISLATURE

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122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

Legislative Document

No. 1524

H.P. 1071

House of Representatives, March 31, 2005

An Act To Update Professional and Occupational Licensing Laws

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative FARRINGTON of Gorham. (GOVERNOR'S BILL)
Cosponsored by Senator BROMLEY of Cumberland and
Representatives: AUSTIN of Gray, RECTOR of Thomaston, Senator: DOW of Lincoln.

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

PART A

Sec. A-1. 5 MRSA §5301, sub-§2, ¶E, as repealed and replaced by PL 1995, c. 625, Pt. A, §11, is amended to read:

E. Convictions for which incarceration for less than one year may be imposed and that involve sexual misconduct by an applicant for massage therapy licensure or a licensed massage therapist or an applicant or licensee of the Board of Licensure in Medicine, the Board of Osteopathic Licensure, the Board of Dental Examiners, the State Board of Examiners of Psychologists, the State Board of Social Worker Licensure, the Board of Chiropractic Licensure, the State Board of Examiners in Physical Therapy, the State Board of Alcohol and Drug Counselors, the Board of Respiratory Care Practitioners, the Board of Counseling Professionals Licensure, the Board of Occupational Therapy Practice, the Board of Examiners on Speech-language Pathology and Audiology, the Board of Hearing Aid Dealers and Fitters, the Radiologic Technology Board of Examiners, the Nursing Home Administrators Licensing Board, the Board of Licensure of Podiatric Medicine, the Board of Complementary Health Care Providers, the Board of Trustees of the Maine Criminal Justice Academy, the State Board of Nursing and the Emergency Medical Services' Board.

Sec. A-1. 5 MRSA §5303, sub-§2, as repealed and replaced by PL 1995, c. 625, Pt. A, §12, is amended to read:

2. **Ten-year limits.** For applicants to and licensees and registrants of the Board of Licensure in Medicine, the Board of Osteopathic Licensure, the Board of Dental Examiners, the State Board of Examiners of Psychologists, the State Board of Social Worker Licensure, the State Board of Nursing, the Board of Chiropractic Licensure, the Board of Trustees of the Maine Criminal Justice Academy, the State Board of Examiners in Physical Therapy, the State Board of Alcohol and Drug Counselors, the Board of Respiratory Care Practitioners, the Board of Counseling Professionals Licensure, the Board of Occupational Therapy Practice, the Board of Examiners on Speech-language Pathology and Audiology, the Board of Hearing Aid Dealers and Fitters, the Radiologic Technology Board of Examiners, the Nursing Home Administrators Licensing Board, the Board of Licensure of Podiatric Medicine, the Board of Complementary Health Care Providers, and the Emergency Medical Services' Board and applicants for massage therapy licensure or licensed massage therapists, the following apply.

2 A. The procedures outlined in sections 5301 and 5302 for
the consideration of prior criminal conviction as an element
4 of fitness to practice a licensed profession, trade or
occupation apply within 10 years of the applicant's or
6 licensee's final discharge, if any, from the correctional
system.

8 B. Beyond the 10-year period, ex-offender applicants or
licensees with no additional convictions must be considered
10 in the same manner as applicants or licensees possessing no
prior criminal record for the purposes of licensing
12 decisions.

14 C. There is no time limitation for consideration of a
registrant's, an applicant's or licensee's conduct that gave
16 rise to the criminal conviction if that conduct is otherwise
a ground for disciplinary action.

18 PART B

20 **Sec. B-1. 32 MRSA §1101, sub-§4-A, ¶¶A and B,** as enacted by PL
22 1983, c. 413, §32, are amended to read:

24 A. School administrative units; and

26 B. Nonprofit organizations; ~~and.~~

28 **Sec. B-2. 32 MRSA §1101, sub-§4-A, ¶C,** as amended by PL 1995,
c. 325, §5, is repealed.

30 PART C

32 **Sec. C-1. 32 MRSA §4861, sub-§5, ¶B,** as amended by PL 2003, c.
34 251, §2, is further amended to read:

36 B. Has paid the ~~application~~ required examination and
license fees fee as set under section 4863-A;

38 **Sec. C-2. 32 MRSA §4864, sub-§9,** as repealed and replaced by
40 PL 1977, c. 78, §187, is amended to read:

42 **9. Cruelty to animals.** The performance of any inhumane or
cruel act, as established by the board ~~in accordance with Title~~
44 ~~17, chapter 43 and Title 17-A, section 510,~~ and by applicable
46 civil and criminal laws and rules in the treatment or care of any
animal;

48 **Sec. C-3. 32 MRSA §4865,** as amended by PL 1993, c. 404, Pt.
50 A, §10, is further amended to read:

2 **§4865. Veterinary technicians**

4 A qualified person desiring registration as a veterinary
6 written submit a completed application to the board, providing
8 together with such information as the board requires and the
10 required examination and license fee pursuant to section 4863-A.

12 ~~All veterinary technicians must reregister annually on or~~
14 ~~before September 30th, or any other date designated by the~~
16 ~~commissioner, and each registration must be accompanied by a~~
18 ~~reregistration fee.~~

20 **Sec. C-4. 32 MRSA §4865-A, sub-§8**, as repealed and replaced by
22 PL 1975, c. 740, §132, is amended to read:

24 **8. Cruelty to animals.** The performance of any act
26 ~~prohibited by Title 17-A, section 510~~ inhumane or cruel act, as
28 established by the board and by applicable civil and criminal
30 laws and rules in the treatment or care of any animal;

32 **PART D**

34 **Sec. D-1. 32 MRSA §12228, sub-§3, ¶A**, as amended by PL 1999,
36 c. 245, §3, is repealed.

38 **Sec. D-2. 32 MRSA §12228, sub-§3, ¶B**, as amended by PL 1999,
40 c. 245, §3, is further amended to read:

42 **B.** ~~After October 1, 2002, at~~ At least 150 semester hours of
44 education, including a minimum 4-year baccalaureate or
46 higher degree conferred by a college or university
48 acceptable to the board, the total educational program to
include basic courses in accounting and auditing determined
to be appropriate under board rules. Rules adopted by the
board pursuant to this paragraph are routine technical rules
as defined in Title 5, chapter 375, subchapter II-A 2-A; and

50 **Sec. D-3. 32 MRSA §12228, sub-§10**, as amended by PL 2003, c.
688, Pt. C, §21, is further amended by amending the first
paragraph to read:

10 **10. Experience.** ~~During the 5-year period immediately~~
12 ~~following October 1, 1997, the applicant shall show that the~~
14 ~~applicant has had 2 years of experience in the practice of public~~
16 ~~accountancy or its equivalent, meeting requirements prescribed by~~
18 ~~the board by rule; or, if the applicant's educational~~
20 ~~qualifications include a masters degree conferred by a college or~~
22 ~~university approved by the board, then only one year of~~
24 ~~experience in that practice or its equivalent is required. After~~

~~October 1, 2002, for~~ For initial issuance of a certificate under
2 this subsection, an applicant shall demonstrate 2 years of
experience under the direction of a licensee certified public
4 accountant licensed by any state or territory of the United
States or equivalent direction, as determined by the board, by a
6 licensed professional in another country and shall must meet the
other requirements prescribed by the board by rule. The
8 applicant's experience must include the use of accounting or
auditing skills, including the issuance of reports on financial
10 statements, and at least one of the following: the provision of
management advisory, financial advisory or consulting services;
12 the preparation of tax returns; the furnishing of advice on tax
matters; or equivalent activities defined by the board by rule.
14 Board rules adopted pursuant to this subsection are routine
technical rules as defined in Title 5, chapter 375, subchapter
16 2-A. To the extent the applicant's experience is as a revenue
agent or in a similar position engaged in the examination of
18 personal and corporate income tax returns for the Bureau of
Revenue Services, the applicant receives credit at the rate of
20 50% toward the experience required by this subsection. To the
extent the applicant's experience is as an examiner engaged in
22 financial examinations for the Bureau of Insurance, the applicant
receives credit under this subsection if that experience meets
24 the following standards:

26 **Sec. D-4. 32 MRSA §12251, sub-§4**, as amended by PL 1999, c.
245, §8, is further amended to read:

28 **4. Out-of-state certificates.** The board shall issue a
30 permit to a holder of a certificate as a certified public
accountant or a public accountant issued by another state upon
32 showing that:

34 ~~A. The applicant passed the examination required for~~
~~issuance of the certificate with grades that would have been~~
36 ~~passing grades at the time in this State;~~

38 B. The applicant:

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

44 (2) At the time of the issuance of the applicant's
certificate in the other state, met all the
46 requirements then applicable in this State; ~~or~~ and

48 ~~(3) Had 4 years of experience in the practice of~~
~~public accountancy or equivalent meeting requirements~~
50 ~~prescribed by the board by rule, after passing the~~

2 examination upon which the certificate was based and
3 within the 10 years immediately preceding the
4 application; and

5 (4) Was eligible to take and passed the examination
6 required for issuance of the certificate with grades
7 that would have been passing grades at the time in this
8 State;

10 C. The applicant meets the requirements of subsection 3,
11 paragraph B.; or

12 D. The applicant had 4 years of experience in the practice
13 of public accountancy or equivalent meeting requirements
14 prescribed by the board by rule, after passing the
15 examination upon which the certificate is based and within
16 the 10 years preceding the submission of the application.

18 **Sec. D-5. 32 MRSA §12252, sub-§8,** as enacted by PL 1999, c.
20 619, §3, is amended to read:

22 **8. Peer review for certified public accountancy firms.**
23 ~~Effective January 1, 2001, the board shall require, as~~ As a
24 condition to the granting or renewal of permits to certified
25 public accountancy firms, that each applicant that provides a
26 defined service other than compilations must successfully
27 participate in an approved peer review program. Participation in
28 such a program is governed by the following.

30 ~~A. If the firm provides a defined service other than~~
31 ~~compilations as of the date of the initial granting or first~~
32 ~~renewal of a certified public accountancy firm's permit~~
33 ~~following December 15, 2000, a~~ A peer review must be
34 completed within 18 months after the initial granting or
35 first renewal of the permit following December 15, 2000.
36 ~~After December 15, 2000, the~~ The firm must undergo a peer
37 review every 3 years for as long as it provides a defined
38 service other than compilations. ~~The firm may satisfy this~~
39 ~~requirement by showing evidence of the satisfactory~~
40 ~~completion of a peer review within 18 months prior to~~
41 ~~January 1, 2001.~~

42 B. A certified public accountancy firm that does not
43 provide a defined service other than compilations is not
44 required to undergo a peer review if the firm annually
45 confirms in writing to the board that it does not provide a
46 defined service other than compilations. A certified public
47 accountancy firm that subsequently provides a defined
48 service other than compilations must undergo a peer review
49 within 18 months after the fiscal year end of the first
50

2 defined services engagement other than compilations that it
3 accepts. ~~Subsequent--peer--reviews--are--governed--by--the~~
4 ~~provisions-of-paragraph-A.~~

5 The board is authorized to adopt rules to carry out the intent of
6 this subsection. Rules adopted pursuant to this subsection are
7 routine technical rules pursuant to Title 5, chapter 375,
8 subchapter ~~II-A~~ 2-A.

10 **PART E**

11 **Sec. E-1. 32 MRSA §14701, sub-§4**, as enacted by PL 2001, c.
12 324, §12, is amended to read:

13 **4. Merchandise.** "Merchandise" includes any objects, wares,
14 goods, promises, commodities, intangibles, services or other
15 things of value but does not include food or technical or
16 vocational schools located outside of the State that are
17 registered pursuant to Title 20-A, section 9501. "Merchandise"
18 does not include securities that are registered or exempt from
19 registration pursuant to chapter 105, the Revised Maine
20 Securities Act and rules adopted pursuant to that Act or
21 insurance products that are regulated under Title 24-A.

22 **PART F**

23 **Sec. F-1. 32 MRSA §14805, sub-§2**, as enacted by PL 1995, c.
24 389, §4, is amended to read:

25 **2. Inspection.** State propane and natural gas inspectors,
26 upon written complaint or whenever they consider it necessary for
27 purposes of examination, may enter into and upon and inspect all
28 buildings, dispensing stations and premises within their
29 jurisdiction at all reasonable hours. They may enter a building,
30 dispensing station or other premises within their jurisdiction
31 only with the permission of the person having control of the
32 building, dispensing station or other premises or, after hearing,
33 upon order of court. If an inspector finds any propane or
34 natural gas installation that does not comply with this Act, the
35 inspector shall order that the installation be removed or
36 remedied, and that order must be complied with immediately by the
37 owner or occupant of the building, dispensing station or other
38 premises ~~or--building~~ or by the installer of the propane or
39 natural gas equipment in violation. If the inspector finds any
40 propane or natural gas installation in any building, dispensing
41 station or structure on premises within the inspector's
42 jurisdiction that creates a danger to other property or to the
43 public, the inspector may forbid the use of the building,
44 dispensing station or structure on premises within the
45 inspector's jurisdiction by serving a written order upon the
46

owner and the occupant, if any, to vacate within a reasonable
2 period of time to be stated in the order.

4

SUMMARY

6

The bill proposes statutory changes in laws regarding
8 occupational licensing standards, electrician licensing,
veterinary medicine, accountancy practice, transient seller
10 registration and the jurisdiction of state propane inspectors
over dispensing stations.

12

Part A expands the list of licensing entities that may
14 consider an applicant's prior criminal conviction history in the
professional licensing process.

16

Part B removes an inaccurate and unnecessary reference to
18 the definition of "household."

20

Part C simplifies references to the Maine Revised Statutes,
22 Title 17-A in the Maine Veterinary Medicine Practice Act;
references to Title 17-A provisions setting forth grounds for
disciplinary action are replaced with narrative descriptions of
24 those provisions.

26

Part D removes unnecessary transition language from the
28 statute regulating accountancy practice. Language is added to
authorize the Board of Accountancy to recognize an applicant's
work completed under the supervision of a licensed professional
30 of another country as satisfying the required work experience to
obtain a certified public accountant license.

32

Part E amends the definition of "merchandise" in the
34 transient seller registration laws to exclude insurance products
from the definition because the insurance industry is already
36 regulated by the Bureau of Insurance.

38

Part F clarifies the jurisdiction of state propane and
natural gas inspectors.