

MAINE STATE LEGISLATURE

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126th MAINE LEGISLATURE

FIRST REGULAR SESSION-2013

Legislative Document

No. 867

S.P. 292

In Senate, March 5, 2013

An Act To Streamline, Amend and Clarify Certain Professional and Occupational Licensing Statutes

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 204.

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

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator PATRICK of Oxford.

Cosponsored by Representative MASON of Topsham and

Senator: CUSHING of Penobscot, Representative: CAMPBELL of Newfield.

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

2 **PART A**

3 **Sec. A-1. 10 MRSA §8003, sub-§5-A, ¶F**, as enacted by PL 2007, c. 402, Pt. C,
4 §3, is amended to read:

5 F. The office, board or commission may issue a letter of guidance or concern to a
6 licensee as part of the dismissal of a complaint against the licensee. A letter of
7 guidance or concern may be used to educate, reinforce knowledge regarding legal or
8 professional obligations or express concern over action or inaction by the licensee
9 that does not rise to the level of misconduct sufficient to merit disciplinary action.
10 The issuance of a letter of guidance or concern is not a formal proceeding and does
11 not constitute an adverse disciplinary action of any form. Notwithstanding any other
12 provision of law, letters of guidance or concern are not confidential. The office,
13 board or commission may place letters of guidance or concern, together with any
14 underlying complaint, report and investigation materials, in a licensee's file for a
15 specified period of time, not to exceed 10 years. Any letters, complaints and
16 materials placed on file may be accessed and considered by the office, board or
17 commission in any subsequent action commenced against the licensee within the
18 specified time frame. Complaints, reports and investigation materials placed on file
19 are confidential only to the extent that confidentiality is required pursuant to Title 24,
20 chapter 21.

21 **Sec. A-2. 10 MRSA §8009**, as enacted by PL 2007, c. 402, Pt. C, §6, is amended
22 to read:

23 **§8009. Standardized terms**

24 Notwithstanding any other provision of law, upon expiration of a professional or
25 occupational licensing board member's term, that member serves until a successor is
26 appointed and qualified. The successor's term commences at the expiration of the
27 preceding term, regardless of the date of appointment. A vacancy occurring prior to the
28 expiration of a specified term must be filled by appointment of a similarly qualified
29 individual as a replacement. The replacement member serves for the remainder of the
30 unexpired term, regardless of the date of appointment.

31 **PART B**

32 **Sec. B-1. 10 MRSA §9003, sub-§2, ¶D**, as repealed and replaced by PL 1995, c.
33 462, Pt. A, §26, is repealed and the following enacted in its place:

34 D. Two members who are dealers;

35 **Sec. B-2. 10 MRSA §9003, sub-§2, ¶E**, as repealed and replaced by PL 1995, c.
36 462, Pt. A, §26, is repealed.

37 **Sec. B-3. 10 MRSA §9021, sub-§7**, as enacted by PL 1993, c. 642, §25, is
38 repealed.

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PART C

Sec. C-1. 32 MRSA §220, sub-§1, ¶C, as enacted by PL 1991, c. 396, §11, is repealed.

Sec. C-2. 32 MRSA §220, sub-§2, ¶C, as repealed and replaced by PL 2007, c. 390, §1, is repealed.

Sec. C-3. 32 MRSA §220-C is enacted to read:

§220-C. License limited to individuals

A license under this subchapter may be issued only to an individual, and licensure must be determined on individual and personal qualifications. A firm, corporation, company, partnership or limited liability company may not be licensed under this chapter.

Sec. C-4. 32 MRSA §225, first ¶, as amended by PL 2007, c. 402, Pt. F, §21, is further amended to read:

Each licensed architect or landscape architect shall upon licensure obtain a seal of such design as the board authorizes and directs ~~and shall submit an impression of the seal to the board.~~ Technical submissions prepared by or under the direct supervision of a licensed architect or under the direct supervision of a licensed landscape architect must be stamped with the seal during the life of the licensee's license. It is unlawful for anyone to stamp or seal any documents with the seal after the license named on the seal has expired or has been revoked, unless the license has been renewed or reissued.

PART D

Sec. D-1. 32 MRSA §1451, first ¶, as amended by PL 2007, c. 402, Pt. J, §2, is further amended to read:

The State Board of Funeral Service, as established by Title 5, section 12004-A, subsection 18, consists of ~~8~~ 7 members, 5 of whom must be persons licensed for the practice of funeral service for 10 consecutive years or who have had 10 consecutive years' experience as a practitioner of funeral service in this State immediately preceding their appointment and ~~3~~ 2 of whom must be public members as defined in Title 5, section 12004-A. Members are appointed by the Governor for a term of 4 years. A national organization of retired persons may submit a list of applicants to the Governor for use in the selection process of one of the public members. Appointments of members must comply with Title 10, section 8009. A board member may be removed by the Governor for cause.

PART E

Sec. E-1. 32 MRSA §3113-B, sub-§4, as amended by PL 2007, c. 402, Pt. N, §4, is further amended to read:

1 **4. Graduate physical therapist or assistant.** The supervised practice of a graduate
2 physical therapist or graduate physical therapist assistant, who is approved by the board
3 to sit for examination, until ~~the results of the examination have been published~~ 60 days
4 after the publication of examination results. The graduate must work in a facility
5 employing at least one physical therapist licensed to practice in this State who assumes
6 responsibility for patient-related activities of the applicant;

7 **Sec. E-2. 32 MRSA §3114-A, sub-§2,** as amended by PL 2003, c. 250, Pt. A, §2,
8 is further amended to read:

9 **2. Application.** To qualify for examination or to apply for a license as a physical
10 therapist or physical therapist assistant, an applicant shall:

11 A. Submit ~~a written~~ an application with supporting documents to the board on forms
12 provided by the board; and

13 B. Pay ~~an application~~ a required fee as set under section 3116-A.

14 ~~In case the application is denied and permission to take the examination refused, the~~
15 ~~examination fee only must be returned to the applicant. An applicant who fails to pass~~
16 ~~the examination is entitled to a reexamination within 6 months upon repayment of the~~
17 ~~examination fee only. If an applicant fails one section of the examination, that applicant~~
18 ~~must repeat the entire examination. An applicant may not take any part of the~~
19 ~~examination more than 3 times, unless that applicant submits evidence of having acquired~~
20 ~~additional formal education related to the previously failed examination section or~~
21 ~~sections.~~

22 PART F

23 **Sec. F-1. 32 MRSA §3401, sub-§2,** as enacted by PL 2003, c. 446, §1 and
24 affected by §4, is amended to read:

25 **2. Master plumbers.** ~~Two~~ Three of the members of the board must be master
26 plumbers as defined in section 3301, and one of those ~~2~~ 3 members must be a member of
27 a bona fide labor organization.

28 **Sec. F-2. 32 MRSA §3401, sub-§3-A,** as amended by PL 2007, c. 402, Pt. O, §2,
29 is repealed.

30 PART G

31 **Sec. G-1. 32 MRSA §13857, sub-§2, ¶B,** as enacted by PL 2003, c. 542, §1, is
32 amended to read:

33 B. An applicant who is licensed in good standing at the time of application to the
34 board under the laws of a jurisdiction that has not entered into a reciprocal agreement
35 with the Board of Counseling Professionals Licensure may qualify for licensure by
36 submitting evidence to the board that the applicant has ~~actively practiced with~~ held a
37 substantially equivalent, valid license for at least 5 consecutive years immediately
38 preceding application to the board at the level of licensure applied for in this State.

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PART H

Sec. H-1. 32 MRSA §14022, as amended by PL 2009, c. 112, Pt. A, §21, is further amended to read:

§14022. Place of business

A licensee shall designate and maintain a principal place of business where real estate appraisal records may be inspected for purposes consistent with this chapter. A nonresident is not required to maintain a place of business in this State if the nonresident maintains an active place of business in ~~the state of domicile~~ another jurisdiction.

Sec. H-2. 32 MRSA §14034, sub-§2, ¶A, as enacted by PL 1999, c. 185, §5, is amended to read:

A. Submit evidence that the applicant is licensed, in good standing under the laws of ~~the applicant's state of domicile~~ another jurisdiction;

PART I

Sec. I-1. 32 MRSA §18101, sub-§11, as enacted by PL 2009, c. 344, Pt. C, §3 and affected by Pt. E, §2, is amended to read:

11. Solid fuel. "Solid fuel" means coal, wood, pellets and other similar organic materials or any combination of them.

PART J

Sec. J-1. 32 MRSA §292, sub-§3, as amended by PL 2007, c. 402, Pt. G, §8, is further amended to read:

3. Reputation. The applicant must have a good reputation for honesty, fair dealing and competency. ~~The applicant shall furnish recommendations from at least 2 references who have known the applicant for at least one year and by their signature attest that the applicant has such a reputation.~~

Sec. J-2. 32 MRSA §2279, sub-§2-A, as enacted by PL 1997, c. 294, §6, is repealed.

Sec. J-3. 32 MRSA §2281, as amended by PL 1997, c. 294, §9, is further amended to read:

§2281. Waiver of requirements for licensure

The board shall grant a license to any person who, prior to July 25, 1984, successfully completed an examination administered by the Psychological Corporation under contract with the American Occupational Therapy Certification Board if that person meets the requirements of section 2279, subsections 1, ~~2-A~~ and 3.

1 **Sec. J-4. 32 MRSA §7053, sub-§3-B, ¶B,** as enacted by PL 2003, c. 429, §4 and
 2 affected by §7, is amended to read:

3 B. Any documentation as required by the board, which may include, but is not
 4 limited to:

- 5 (1) Evidence of employment in a social service delivery field; and
- 6 (2) Evidence of an arrangement of consultation to be provided in accordance
 7 with subsection 3-C, paragraph B; and.
- 8 ~~(3) Letters of professional recommendation.~~

9 **Sec. J-5. 32 MRSA §13191, sub-§5,** as amended by PL 2007, c. 402, Pt. BB,
 10 §21, is further amended to read:

11 **5. Reputation.** The applicant must have a good reputation for honesty, truthfulness,
 12 fair dealing and competency. ~~The applicant must furnish recommendations from at least 3~~
 13 ~~persons not related to the applicant who have known the applicant for at least one year~~
 14 ~~immediately preceding the date of the application and by their signature attest that the~~
 15 ~~applicant has such a reputation.~~

16 **Sec. J-6. 32 MRSA §14021, sub-§5,** as amended by PL 2007, c. 402, Pt. GG, §9,
 17 is further amended to read:

18 **5. Reputation.** The applicant must have a good reputation for honesty, truthfulness,
 19 fair dealing and competency. ~~The applicant shall furnish recommendations from at least~~
 20 ~~3 persons not related to the applicant who have known the applicant for at least one year~~
 21 ~~immediately preceding the date of the application and by their signature attest that the~~
 22 ~~applicant has such a reputation.~~

23 **PART K**

24 **Sec. K-1. 32 MRSA §294, sub-§1, ¶B,** as enacted by PL 1999, c. 146, §5 and
 25 amended by PL 2011, c. 286, Pt. B, §5, is repealed.

26 **Sec. K-2. 32 MRSA §12232, sub-§3, ¶B,** as enacted by PL 2009, c. 242, §13, is
 27 amended to read:

28 B. To comply with the provisions of this chapter and the board's rules; and

29 **Sec. K-3. 32 MRSA §12232, sub-§3, ¶C,** as enacted by PL 2009, c. 242, §13, is
 30 amended to read:

31 C. To the stipulation that, in the event the license from the state of the individual's
 32 principal place of business is no longer valid, the individual will cease offering or
 33 rendering professional services in the State individually and on behalf of a firm; and.

34 **Sec. K-4. 32 MRSA §12232, sub-§3, ¶D,** as enacted by PL 2009, c. 242, §13, is
 35 repealed.

36 **Sec. K-5. 32 MRSA §12263,** as amended by PL 2009, c. 242, §22, is repealed.

1 **Sec. K-6. 32 MRSA §13173, sub-§4, ¶B**, as enacted by PL 1987, c. 395, Pt. A,
2 §212, is repealed.

3 **Sec. K-7. 32 MRSA §13193**, as enacted by PL 1987, c. 395, Pt. A, §212, is
4 amended to read:

5 **§13193. Nonresidents**

6 ~~All nonresident license applicants shall be required to file a properly completed~~
7 ~~irrevocable consent to service, as described for agencies in section 13173, subsection 4,~~
8 ~~paragraph B.~~ In lieu of education and experience requirements, nonresident original
9 license applicants must hold a similar active license in good standing in their place of
10 legal residence and shall appear at such time and place as the director may designate for
11 the purpose of written examination pertaining to Maine real estate laws.

12 **Sec. K-8. 32 MRSA §13857, sub-§2, ¶D**, as enacted by PL 2003, c. 542, §1 and
13 amended by PL 2011, c. 286, Pt. B, §5, is repealed.

14 **Sec. K-9. 32 MRSA §14024, sub-§1**, as enacted by PL 1999, c. 185, §5, is
15 repealed.

16 **Sec. K-10. 32 MRSA §14034, sub-§2, ¶A**, as enacted by PL 1999, c. 185, §5, is
17 amended to read:

18 A. Submit evidence that the applicant is licensed; in good standing under the laws of
19 the applicant's state of domicile; and

20 **Sec. K-11. 32 MRSA §14034, sub-§2, ¶B**, as enacted by PL 1999, c. 185, §5, is
21 repealed.

22 **Sec. K-12. 32 MRSA §14510**, as enacted by PL 1993, c. 444, §1, is repealed.

23 **Sec. K-13. 32 MRSA §14714**, as enacted by PL 2001, c. 324, §12, is repealed.

24 **SUMMARY**

25 This bill makes changes to the laws governing licensure of certain professions and
26 occupations.

27 Part A provides that a letter of guidance issued by the Department of Professional and
28 Financial Regulation, Office of Professional and Occupational Regulation or a licensing
29 board or commission is appropriate only when a complaint is dismissed and the licensing
30 entity feels that additional education or guidance is necessary. In addition, the proposal
31 clarifies that a member of a professional or occupational licensing board serves until a
32 successor is qualified.

33 Part B changes the membership of the Manufactured Housing Board by eliminating
34 the board position reserved for the owner or operator of a mobile home park with 15 or
35 fewer lots and adding a position designated for a manufactured housing dealer and deletes

1 a requirement that a nonresident licensee designate the executive director of the board as
2 an agent for service of process.

3 Part C clarifies that licenses for architects and landscape architects may be issued
4 only to individuals, not to business entities. Part C also repeals the requirement that
5 licensees must submit an impression of their seals to the licensing board.

6 Part D reduces the number of public members of the State Board of Funeral Service
7 from 3 to 2.

8 Part E extends the exemption from licensure for graduate-level physical therapy
9 applicants until 60 days after publication of required examination results. Part E also
10 eliminates the requirement that applicants who fail the required examination obtain
11 additional education and receive approval from the Board of Examiners in Physical
12 Therapy to retake the exam after 3 failed attempts.

13 Part F changes the membership of the Plumbers' Examining Board by eliminating one
14 journeyman position and adding an additional master plumber position.

15 Part G requires that an applicant licensed in another state who applies for a
16 substantially equivalent license in Maine from the Board of Counseling Professionals
17 Licensure need not have actively practiced but need only have held a valid license in the
18 original jurisdiction for 5 years before applying for licensure in Maine.

19 Part H removes references in the enabling statute of the Board of Real Estate
20 Appraisers to the term "state of domicile" in sections setting forth pathways to licensure
21 for licensees of other jurisdictions and replaces the term with "another jurisdiction" for
22 greater accuracy.

23 Part I amends the definition of "solid fuel" to include pellets in the law concerning
24 the Maine Fuel Board.

25 Part J repeals provisions requiring the submission of references regarding the
26 reputation of an applicant for a license as an auctioneer; an occupational therapist; a
27 social worker; a real estate broker, associate broker, sales agent or timeshare agent; a
28 counseling professional; or a real estate appraiser.

29 Part K repeals provisions requiring the designation of the licensing official as an
30 agent for service of process for a nonresident licensed as an auctioneer; an accountant; a
31 real estate broker or brokerage, associate broker, sales agent or timeshare agent; a
32 counseling professional; a real estate appraiser; or a transient seller.