

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals
(may include minor formatting differences from printed original)



127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

No. 914

H.P. 634

House of Representatives, March 12, 2015

An Act To Amend the Public Accountancy Laws

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

Handwritten signature of Robert B. Hunt in cursive.

ROBERT B. HUNT
Clerk

Presented by Representative AUSTIN of Gray.
Cosponsored by Senator PATRICK of Oxford and
Representatives: CRAFTS of Lisbon, HERBIG of Belfast, MALABY of Hancock,
O'CONNOR of Berwick, POULIOT of Augusta, SANDERSON of Chelsea, SIROCKI of
Scarborough, VACHON of Scarborough.

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

2 **Sec. 1. 32 MRSA §12201, sub-§3-A**, as amended by PL 2007, c. 384, §1, is
3 further amended to read:

4 **3-A. Attest service.** ~~For purposes of section 12275, subsections 12 and 13, "defined~~
5 "Attest service" means providing the following services:

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

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

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

13 D. Any engagement to be performed in accordance with the auditing standards of the
14 Public Company Accounting Oversight Board, established in 15 United States Code,
15 Section 7211 (2007); or

16 ~~E. Any compilation of a financial statement to be performed in accordance with the~~
17 ~~Statement on Standards for Accounting and Review Services, SSARS.~~

18 F. Any examination, review or agreed upon procedures engagement to be performed
19 in accordance with the Statements on Standards for Attestation Engagements, SSAE,
20 other than an engagement described in paragraph C.

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

23 **Sec. 2. 32 MRSA §12201, sub-§6-A**, as enacted by PL 1999, c. 619, §1, is
24 amended to read:

25 **6-A. Peer review.** "Peer review" means a study, appraisal or review of one or more
26 aspects of the professional work of a certified public accountancy firm that provides a
27 ~~defined~~ an attest service by a person or persons who are licensed as certified public
28 accountants and who are not affiliated with the certified public accountancy firm being
29 reviewed.

30 **Sec. 3. 32 MRSA §12201, sub-§8**, as enacted by PL 1987, c. 489, §2, is amended
31 to read:

32 **8. Practice of or practicing public accountancy.** "Practice of or practicing public
33 accountancy" means the following combined activities by a person or firm:

34 A. Representing to the public that ~~he~~ the person or ~~it~~ the firm is a licensee; and

35 B. Performing or offering to perform, for a client or potential client, services
36 involving the use of accounting or auditing skills.

1 Accounting or auditing skills include the issuance of reports ~~on financial statements~~,
2 management advisory or consulting services, the preparation of tax returns and the
3 furnishing of advice on tax matters.

4 **Sec. 4. 32 MRSA §12201, sub-§10**, as amended by PL 2007, c. 402, Pt. Z, §3, is
5 repealed.

6 **Sec. 5. 32 MRSA §12201, sub-§10-A** is enacted to read:

7 **10-A. Report.** "Report," when used with reference to an attest service, means an
8 opinion or other form of language that states or implies assurance as to the reliability of
9 the attest information and that also includes or is accompanied by a statement or
10 implication that the person or firm issuing it has special knowledge of or competence in
11 accounting or auditing. A statement or implication of special knowledge or competence
12 may arise from use by the issuer of the report of names or titles indicating that the person
13 or firm is an accountant or auditor or from the language of the report itself. "Report"
14 includes any form of language that disclaims an opinion when such form of language is
15 conventionally understood to imply positive assurances as to the reliability of the attest
16 information or compiled financial statements referred to or special competence on the
17 part of the person or firm issuing such language and includes any other form of language
18 that is conventionally understood to imply such assurance or such special knowledge or
19 competence.

20 **Sec. 6. 32 MRSA §12202, sub-§2**, as enacted by PL 1987, c. 489, §2, is amended
21 to read:

22 **2.** Issue a report ~~on financial statements~~ as defined in section 12201, subsection ~~10~~
23 10-A, except those persons described in section 12275, subsection 1, paragraphs A and B.

24 **Sec. 7. 32 MRSA §12228, sub-§10**, as amended by PL 2009, c. 242, §8, is
25 further amended to read:

26 **10. Experience.** For initial issuance of a license under section 12230, an applicant
27 must demonstrate 2 years of experience under the direction of a certified public
28 accountant licensed by any state or territory of the United States or equivalent direction,
29 as determined by the board, by a licensed professional in another country and must meet
30 the other requirements prescribed by the board by rule. The applicant's experience must
31 include the use of accounting or auditing skills, including the issuance of reports ~~on~~
32 ~~financial statements~~, and at least one of the following: the provision of management
33 advisory, financial advisory or consulting services; the preparation of tax returns; the
34 furnishing of advice on tax matters; or equivalent activities defined by the board by rule.
35 Board rules adopted pursuant to this subsection are routine technical rules as defined in
36 Title 5, chapter 375, subchapter 2-A. To the extent the applicant's experience is as a
37 revenue agent or in a similar position engaged in the examination of personal and
38 corporate income tax returns for the Bureau of Revenue Services, the applicant receives
39 credit at the rate of 50% toward the experience required by this subsection. To the extent
40 the applicant's experience is as an examiner engaged in financial examinations for the
41 Bureau of Insurance, the applicant receives credit under this subsection if that experience
42 meets the following standards:

1 A. Examinations are performed in conformity with the Examiners' Handbook
2 published by the National Association of Insurance Commissioners or its successor or
3 other organization approved by the board;

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

7 C. Written reports of examination are prepared in conformity with the Examiners'
8 Handbook published by the National Association of Insurance Commissioners or its
9 successor or other organization approved by the board. All examiners working on the
10 examinations must participate in the preparation of the report;

11 D. Reports of examination are prepared in accordance with statutory accounting
12 principles. All examiners working on the examinations must participate in the
13 preparation of the financial statements and corresponding note disclosures; and

14 E. All examiners assigned to an examination must participate in the planning of the
15 examination and the planning phase conforms to the Examiners' Handbook published
16 by the National Association of Insurance Commissioners or its successor or other
17 organization approved by the board and generally accepted auditing standards.

18 **Sec. 8. 32 MRSA §12252, sub-§1, ¶B**, as amended by PL 2009, c. 242, §21, is
19 further amended to read:

20 B. A firm that does not have an office in this State may perform services described in
21 section 12201, subsection 3-A, paragraph B or F for a client having its home office in
22 this State and may use the title "CPA" or "CPA firm" without a license issued under
23 this section only if:

- 24 (1) It qualifies for a firm license pursuant to subsections 3 and 8; and
25 (2) It performs such services through an individual with practice privileges under
26 section 12232.

27 **Sec. 9. 32 MRSA §12252, sub-§3, ¶B**, as amended by PL 2009, c. 242, §21, is
28 further amended to read:

29 B. A certified public accountancy firm or public accountancy firm may include
30 nonlicensee owners as long as:

31 (1) All nonlicensee owners are individuals who actively participate in the
32 certified public accountancy firm or public accountancy firm or an affiliated
33 entity;

34 (2) The firm complies with such other requirements as the board may impose by
35 rule; and

36 (3) The firm designates an individual who is a licensee of this State or, in the
37 case of a firm that must have a license pursuant to subsection 1, paragraph A,
38 subparagraph (3), designates an individual who is a licensee of another state who
39 meets the requirements set out in section 12232, subsection 1 who is responsible
40 for the proper licensure of the firm and identifies that individual who is a licensee
41 to the board.

1 **Sec. 10. 32 MRSA §12252, sub-§8**, as repealed and replaced by PL 2007, c. 695,
2 Pt. A, §38, is amended to read:

3 **8. Peer review for certified public accountancy firms.** As a condition to the
4 granting or renewal of licenses to certified public accountancy firms, each applicant that
5 provides ~~a defined~~ an attest service other than compilations must successfully participate
6 in an approved peer review program. Participation in such a program is governed by the
7 following.

8 A. A peer review must be completed within 18 months after the initial granting of
9 the license. The firm must undergo a peer review every 3 years for as long as it
10 provides ~~a defined~~ an attest service other than compilations.

11 B. A certified public accountancy firm that does not provide ~~a defined~~ an attest
12 service other than compilations is not required to undergo a peer review if the firm
13 annually confirms in writing to the board that it does not provide ~~a defined~~ an attest
14 service other than compilations. A certified public accountancy firm that
15 subsequently provides ~~a defined~~ an attest service other than compilations must
16 undergo a peer review within 18 months after the fiscal year end of the first ~~defined~~
17 attest services engagement other than compilations that it accepts.

18 The board is authorized to adopt rules to carry out the intent of this subsection. Rules
19 adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter
20 375, subchapter 2-A.

21 **Sec. 11. 32 MRSA §12275, sub-§1**, as amended by PL 2009, c. 242, §29, is
22 further amended to read:

23 **1. Issuance of reports.** ~~No~~ A person or firm not holding a valid license issued under
24 this chapter may not issue a report, including reviews and compilations, on financial
25 statements or on any attest service of any other person, firm, organization or
26 governmental unit. This prohibition does not apply to the following:

27 A. An officer, partner or employee of any firm or organization affixing that person's
28 signature to any statement or report in reference to the financial affairs of that firm or
29 organization with any wording designating the position, title or office that that person
30 holds in the organization;

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

33 C. The performance by any person of other services involving the use of accounting
34 skills, including management advisory or consulting services, the preparation of tax
35 returns, the furnishing of advice on tax matters and the preparation of financial
36 statements without the issuance of reports.

37 **Sec. 12. 32 MRSA §12275, sub-§10**, as amended by PL 2007, c. 402, Pt. Z, §24,
38 is further amended to read:

39 **10. Foreign practice.** Subsections 1 to 11 do not apply to a person or firm holding a
40 certificate, designation, degree or license granted in a foreign country entitling the holder
41 to engage in the practice of public accountancy or its equivalent in that country, whose

1 activities in this State are limited to the provision of professional services to persons or
2 firms who are residents of, governments of or business entities of the country in which
3 that person holds that entitlement, who issues no reports with respect to the ~~financial~~
4 ~~statements~~ attest service information of any other persons, firms or governmental units in
5 this State, and who does not use in this State any title or designation other than the one
6 under which that person practices in that country, followed by a translation of that title or
7 designation into the English language, if it is in a different language and by the name of
8 that country.

9 **Sec. 13. 32 MRSA §12275, sub-§§12 and 13**, as enacted by PL 1999, c. 245,
10 §12, are amended to read:

11 **12. Commissions; referral fees.** A licensee, when performing for a client ~~a defined~~
12 an attest service, may not receive a commission or a referral fee:

- 13 A. For recommending or referring to a client any product or service;
14 B. For recommending or referring any product or service to be supplied by a client;
15 or
16 C. As a consequence of a decision by a client to purchase or supply a particular
17 product or service.

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

21 This prohibition applies during the period in which the licensee is engaged to perform any
22 of the ~~defined~~ attest services and the period covered by any historical financial statements
23 involved in the ~~defined~~ attest services.

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

28 **13. Contingency fees.** A licensee or a licensee's firm may not:

- 29 A. When involved in providing for a client ~~a defined~~ an attest service:
30 (1) Perform for a contingent fee any services for a client; or
31 (2) Receive a contingency fee from a client; or
32 B. Prepare an original or amended tax return or claim for a tax refund for a
33 contingent fee.

34 Notwithstanding paragraph A, a licensee when providing ~~a defined~~ an attest service may
35 receive a contingency fee if the licensee's compilation report discloses in writing a lack of
36 independence.

37 The prohibitions apply during the period in which the licensee is engaged to perform any
38 of the services listed in this section and the period covered by any historical financial
39 statements involved in any of the listed services.

1 As used in this subsection a "contingent fee" or "contingency fee" means a fee established
2 for the performance of any service pursuant to an arrangement in which no fee is charged
3 unless a specified finding or result is attained or in which the amount of the fee is
4 otherwise dependent upon the finding or result of the service. For purposes of this
5 subsection, fees are not regarded as being contingent if fixed by courts or other public
6 authorities or, in tax matters, if determined based on the results of judicial proceedings or
7 the findings of governmental agencies. A licensee's fees may vary depending on the
8 complexity of services rendered.

9 **Sec. 14. 32 MRSA §12275, sub-§14, ¶C**, as amended by PL 2009, c. 242, §37,
10 is further amended to read:

11 C. Notwithstanding any other provision of this section, it is not a violation of this
12 section ~~if for~~ a firm that does not hold a valid license under section 12252 and that
13 does not maintain an office in this State ~~provides to use the title "CPA" or "Certified~~
14 Public Accountants" as part of the firm's name and to provide professional services in
15 this State, and licensees and individuals with practice privileges may provide services
16 on behalf of such a firm if the firm complies with the requirements of section 12252,
17 subsection 1, paragraph B or C, whichever is applicable. An individual or firm
18 authorized under this paragraph to use practice privileges in this State shall comply
19 with the requirements otherwise applicable to licensees under this section.

20 SUMMARY

21 This bill amends definitions under Maine's accountancy laws and makes conforming
22 changes to the accountancy laws regarding attest services to reflect the most recent
23 version of the American Institute of Certified Public Accountants and National
24 Association of State Boards of Accountancy Uniform Accountancy Act.