

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINETEENTH LEGISLATURE

FIRST REGULAR SESSION
December 2, 1998 to June 19, 1999

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 18, 1999

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

J.S. McCarthy Company
Augusta, Maine
1999

I. Two scientists who have expertise in marine resources management; and

J. One sea urchin harvester who holds a current boat tender's license.

In making appointments under paragraphs A, B, C and D, the commissioner shall select members to ensure a geographic distribution of representation from each zone.

Sec. 6. 12 MRSA §6749-X, sub-§3, ¶B, as amended by PL 1997, c. 685, §11, is further amended to read:

B. Research projects and grants funded by the Sea Urchin Research Fund under section 6749-R. The council may seek advice from scientists who have expertise in marine resource management in determining the research needs for the sea urchin fishery;

Sec. 7. 12 MRSA §6749-Z, sub-§3, as enacted by PL 1995, c. 595, §5, is amended to read:

3. Conditions for authorization. ~~The commissioner shall authorize zone change requests for a zone if the number of licenses issued for that zone in the previous calendar year is less than the number of licenses issued for that zone in the year before the previous calendar year. The total number of authorized change requests for a zone during a licensing year may not exceed the number by which the number of licenses issued for that zone in the previous calendar year is less than the number of licenses issued for that zone in the year before the previous calendar year. Zone 1 during a licensing year must equal the total authorized requests for Zone 2. The commissioner shall authorize zone change requests in chronological order of requests received under this section.~~

Sec. 8. Transition provision. Members of the Sea Urchin Zone Council who were appointed under the Maine Revised Statutes, Title 12, section 6749-X prior to the effective date of this Act and whose membership is affected by this Act shall continue to serve on the council until their current terms expire.

Sec. 9. Allocation. The following funds are allocated from Other Special Revenue funds to carry out the purposes of this Act.

	1999-00	2000-01
MARINE RESOURCES, DEPARTMENT OF		
Division of Administrative Services		
All Other	\$7,230	\$9,930

Allocates funds to support the activities of the Sea Urchin Zone Council.

See title page for effective date.

CHAPTER 245

S.P. 706 - L.D. 1981

An Act to Revise the Accountancy Laws

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

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 §12228, sub-§3, as amended by PL 1997, c. 265, §2, is further amended to read:

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

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

B. After October 1, 2002, at least 150 semester hours of education, including a minimum 4-year baccalaureate or higher degree conferred by a college or university 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; and

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

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

4. Examination; administration. The examination to be passed as a condition for the granting of a certificate must be in writing or in electronic form, must be held twice a year and must test the applicant's knowledge of the subjects of accounting and auditing and such other related subjects as the board may specify by rule. Rules adopted pursuant to this section are routine technical rules as defined in ~~the Maine Administrative Procedure Act~~, Title 5, chapter 375, subchapter II-A. The time for holding the examination 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 examination, including methods for grading papers and determining a passing grade required of an applicant for a certificate, except that the board, to the extent possible, shall see to it that the grading of the examination and the passing grades are uniform with those applicable in all other states. The board may make the use of all or any part of the Uniform certified public accountant Examination and the Advisory Grading Service of the American Institute of certified public accountants or any other examination

approved by the board and may contract with 3rd parties to perform such administrative services with respect to the examination as it considers appropriate to assist it in performing its duties under this section.

Sec. 5. 32 MRSA §12228, sub-§§12 to 15 are enacted to read:

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

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

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

B. The foreign designation:

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

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

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

C. The applicant:

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

(2) Completed an experience requirement, substantially equivalent to the requirement set out in subsection 10 in the jurisdiction that granted the foreign 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

(3) Passed a uniform qualifying examination on national standards and an examination on the laws, regulations and code of

ethical conduct in effect in this State acceptable to the board.

14. Action by foreign jurisdiction. An applicant under subsection 13 shall in an application for a certificate list all jurisdictions, foreign and domestic, in which the applicant has applied for or holds a designation to practice public 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.

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

Sec. 6. 32 MRSA §12229 is enacted to read:

§12229. Licensees offering or rendering services in another state

A licensee of this State offering or rendering services or using the title, certified public account, in another state is required to register in that state and is subject to disciplinary 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.

Sec. 7. 32 MRSA §12240, sub-§4, as amended by PL 1995, c. 353, §25, is further amended to read:

4. Examination; administration. The examination to be passed as a condition for the granting of a certificate must be in writing or in electronic form, be held twice a year and be the 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 examinations, including methods for grading papers and determining a passing grade required of an applicant for a certificate, except that the board, to the extent possible, shall see to it that the grading of the examinations and the passing grades are uniform with those applicable in all other states. The board may contract with 3rd parties to perform those administrative services with respect to the examinations as it considers appropriate to assist it in performing its duties under this section.

Sec. 8. 32 MRSA §12251, sub-§4, as enacted by PL 1987, c. 489, §2, is amended to read:

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

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

B. The applicant:

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

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

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

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

Sec. 9. 32 MRSA §12251, sub-§4-A is enacted to read:

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

A. Is eligible under the substantial equivalency standard authorized pursuant to section 12228, subsection 12. The holder of a permit issued under this section may engage in the practice of public accountancy only in a firm that holds a permit issued under section 12252; and

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

(1) To the jurisdiction of the board;

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

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

Sec. 10. 32 MRS §12251, sub-§5, as amended by PL 1989, c. 483, Pt. A, §54, is further amended to read:

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

Sec. 11. 32 MRS §12251, sub-§10 is enacted to read:

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

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

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

A. For recommending or referring to a client any product or service;

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

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

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

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

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

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

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

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

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

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

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

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

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

See title page for effective date.

CHAPTER 246

H.P. 1310 - L.D. 1871

An Act to Revise Procedures for Probation Revocation

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

Sec. 1. 17-A MRS §1205, as amended by PL 1997, c. 273, §1, is further amended to read:

§1205. Commencement of probation revocation proceedings by arrest

1. If a probation officer has probable cause to believe that a person on probation has violated a condition of that person's probation, that officer may arrest the person or ~~deliver a summons to that person ordering that person to appear for a court hearing on cause the person to be arrested for the alleged violation. If the probation officer can not, with due diligence, locate the person in order to arrest the person or serve a summons on that person, that the officer shall file a written notice of this fact with the court that placed the person on probation. Upon the filing of that written notice, the court shall issue a warrant for the arrest of that person.~~

2. ~~The summons delivered pursuant to subsection 1 shall include the signature of the probation officer, a brief statement of the alleged violation, the time and place of the alleged violation and the time, place and date the person is to appear in court. As soon as practicable after service of the summons, the probation officer shall file with the court a motion for revocation of probation, which shall set forth in detail the facts underlying the alleged violation. A copy of the motion shall be furnished to the person on probation prior to the court hearing on the alleged violation.~~

~~3. If the person fails to appear in court after having been served with a summons, or if written notice is filed with the court that the person cannot be located, the court may issue a warrant for the arrest of the person. The court may then order the person committed with or without bail, pending the court hearing or pending a preliminary hearing, if the person is entitled to such a hearing under subsection 4.~~

4. A person arrested pursuant to ~~subsections subsection 1 or 3 shall, with or without a warrant, must~~ be afforded a preliminary hearing as soon as reasonably possible, but not later than on the 3rd day after arrest, excluding Saturdays, Sundays and holidays, in accordance with the procedures set forth in section 1205-A. ~~No~~ A preliminary hearing ~~shall~~ may not be afforded if, within the 3-day period, the person is released on bail or is afforded an opportunity for a court hearing on the alleged violation. ~~If a person is arrested pursuant to subsections 1 or 3, but is not entitled to a preliminary hearing under this subsection, the probation officer shall file with the court a motion for revocation of probation, as described in subsection 2. A copy of the motion shall be furnished to the person on probation prior to the court hearing on the alleged violation. A preliminary hearing is not required if the person is charged with or convicted of a new offense and is incarcerated as a result of the pending charge or conviction.~~

~~5. If a person on probation is charged with or convicted of a new offense and is incarcerated as a result of the pending charge or conviction, a motion for revocation as described in subsection 2 may be filed with the court. Upon filing of the motion, the court may order the person committed with or without bail, pending the court hearing or pending the preliminary hearing. A person incarcerated pursuant to this subsection shall be afforded a preliminary hearing only if he has been released on bail on the pending criminal charge or pending appeal following a conviction, and has not been released on bail on the alleged violation of probation and has not been afforded a court hearing within the time period specified in subsection 4. A person not entitled to a preliminary hearing under this subsection shall be furnished with a copy of the motion prior to the court hearing on the alleged violation.~~

6. Whenever a person is entitled to a preliminary hearing pursuant to subsection 4 or 5, the failure to hold the hearing within the time period specified in subsection 4 ~~shall be~~ is grounds for ~~his~~ the person's release on personal recognizance pending further proceedings.

7. ~~The running of the period of probation shall be tolled upon either the delivery of the summons, the filing of the written notice with the court that the person cannot be located, or the arrest of the person,~~