

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND TWENTIETH LEGISLATURE
FIRST REGULAR SESSION
December 6, 2000 to June 22, 2001

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 21, 2001

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
2001

executive director must be set by the board within the range established by Title 2, section 6-C; and

Sec. H-3. 32 MRSA §3269, sub-§17 is enacted to read:

17. Approval of licenses. The power to direct staff to review and approve applications for licensure or renewal in accordance with criteria established in law or in rules adopted by the board. Licensure decisions made by staff may be appealed to the full board.

See title page for effective date.

CHAPTER 261

H.P. 1277 - L.D. 1737

An Act to Amend the Forester Licensure Law

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

Sec. 1. 5 MRSA §12004-A, sub-§17, as amended by PL 1999, c. 687, Pt. B, §1, is further amended to read:

17. State Board of Licensure for Professional Foresters	\$35/Day	32 MRSA §5004 §5505
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Sec. 2. 12 MRSA §8868, sub-§3, as enacted by PL 1989, c. 555, §10, is amended to read:

3. Professional forester. "Professional forester" means a person licensed pursuant to Title 32, chapter 75 76.

Sec. 3. 32 MRSA c. 75, as amended is repealed.

Sec. 4. 32 MRSA c. 76 is enacted to read:

CHAPTER 76

FORESTER LICENSING

SUBCHAPTER 1

GENERAL PROVISIONS

§5501. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Board. "Board" means the Board of Licensure of Foresters.

2. Department. "Department" means the Department of Professional and Financial Regulation.

3. Forester. "Forester" means a person licensed under this chapter to practice forestry.

4. Forestry. "Forestry" means services relating to forestry requiring the application of forestry principles and techniques. The services include, but are not limited to, investigations, consultations, timber inventory, development of forest management plans, responsible supervision of forest management, forest utilization, appraisal of severed or unsevered timber, forest economics or other forestry activities as carried out in connection with any public or private lands. "Forestry" does not include services for the physical implementation of cutting, hauling, handling or processing of forest products or for the physical implementation of timber stand improvements or other silvicultural activities or measuring or scaling activities performed by persons licensed under Title 10, section 2365-A.

5. Intern forester. "Intern forester" means a person licensed under this chapter to practice forestry under the sponsorship of a forester.

6. Person. "Person" means an individual.

7. Sponsor. "Sponsor" means a forester who is responsible for overseeing the activities of an intern forester.

8. Supervisor. "Supervisor" means a forester who is responsible for the activities of an unlicensed person providing services under the direction of the forester.

§5502. License required

Except as provided in section 5503, it is unlawful for a person to practice forestry or advertise or offer to practice forestry without a license issued under this chapter.

§5503. Exemptions to licensing

A license is not required for forestry activities conducted by:

1. Forestry instructional and educational institutions. A forestry instructional and educational institution approved by the Commissioner of Education pursuant to the laws of the State or a program of education at an institution licensed or approved by the State to grant a bachelor's or higher degree;

2. Federal Government employee. Federal Government employees conducting forestry practices within the scope of their employment;

3. Person registered and practicing forestry. A person registered and practicing forestry under the supervision of a forester as set forth by section 5515, subsection 9; or

4. Owner. An owner managing or otherwise conducting forestry practices on that owner's land.

§5504. Penalties; injunction

1. Unlicensed practice. A person who violates section 5502 is subject to the provisions of Title 10, section 8003-C.

2. Endorsement. It is a Class E crime for a forester or intern forester to endorse any plan, map or report other than a forest management and harvest plan as defined in Title 36, section 573, subsection 3-A, unless that forester or intern forester prepared or was in charge of the preparation of the map, plan or report.

SUBCHAPTER II

BOARD OF LICENSURE OF FORESTERS

§5505. Board; organization

1. Establishment; purpose. The Board of Licensure of Foresters, as established within the department pursuant to Title 5, section 12004-A, subsection 17, administers the provisions of this chapter to protect the public by improving the standards relative to the practice of forestry, to protect the public from unqualified practitioners and to help ensure the proper management of the forest resources of the State.

2. Members. The board consists of 6 members appointed by the Governor. Each member must be a citizen of the United States and a resident of this State. The board consists of:

- A. One public member; and
- B. Five foresters who hold valid licenses.

3. Terms; removal. Terms of the members of the board are for 3 years. Members may be removed by the Governor for cause.

4. Meetings; quorum. The board shall meet at least once a year and at such other times as the board determines necessary. A majority of the members of the board constitutes a quorum for the transaction of business under this chapter.

5. Election of officers. The board shall annually elect a chair and other officers as it determines necessary.

§5506. Rules

The board may establish guidelines and rules by which this chapter is administered. Except where otherwise indicated, rules adopted pursuant to this chapter are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

1. Education. The board may adopt rules to be applied in determining whether educational programs meet the license qualifications under this chapter.

2. License qualifications. The board may adopt rules relating to the qualifications of an applicant for a license authorized under this chapter that ensure that an applicant is sufficiently trustworthy and competent to practice forestry.

3. Standards of practice. The board may adopt rules consistent with the standards set forth in this chapter governing the practice of forestry in order to establish standards of practice that serve the public interest. The board may not adopt rules that govern forestry practices.

4. Other. The board may adopt and enforce other rules that are necessary for the performance of its duties under this chapter.

§5507. Fees

The Director of the Office of Licensing and Registration, pursuant to Title 10, section 8003, subsection 2-A, paragraph D, may establish by rule fees for purposes authorized under this chapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for a purpose may not exceed \$100 annually. Rules adopted pursuant to this section are routine technical rules as define in Title 5, chapter 375, subchapter II-A.

§5508. Duties and powers

The board has the following duties and powers, in addition to those otherwise set forth in this chapter.

1. Consent agreements. The board may execute a consent agreement that resolves a complaint or investigation without further proceedings pursuant to Title 10, section 8003, subsection 5, paragraph B.

2. Denial of license. The board may not refuse to issue or renew a license for a reason other than the failure to pay a required fee unless the applicant has been afforded an opportunity for an adjudicatory hearing consistent with the board's rules.

3. Hearings. The board shall conduct hearings in conformity with Title 5, chapter 375, subchapter IV to the extent applicable. The board after hearing may impose disciplinary sanctions pursuant to Title 10, section 8003, subsection 5, paragraph A-1. In addition, the board, pursuant to Title 5, section 10004, may revoke or suspend a license.

4. Investigation. The board shall investigate or cause to be investigated all complaints made to it and all cases of noncompliance with or violation of this chapter.

5. License qualification. The board shall evaluate the qualifications for licensure under this chapter.

§5509. Grounds for disciplinary action

1. Grounds. After a hearing pursuant to section 5508, subsection 3, the board has the authority to impose disciplinary sanctions at any time when a licensee is found guilty of one or more of the following:

A. Subject to Title 5, chapter 341, a Class A, B or C crime or any other crime that bears directly on the practice of forestry;

B. An act or conduct that constitutes deceit, misconduct, misrepresentation, fraud, incompetence or gross negligence in the practice of forestry;

C. Procuring or attempting to procure a license under this chapter by knowingly making a false statement, submitting false information or making a material misrepresentation in an application filed with the board;

D. Aiding or abetting a person in conduct that constitutes a violation of this chapter;

E. Violating a rule adopted by the board or a provision of this chapter; and

F. An act or conduct that constitutes or demonstrates unprofessional practice.

SUBCHAPTER III

LICENSING QUALIFICATIONS

§5510. General qualifications

1. Application. The applicant shall submit a properly completed application on forms furnished by the board, together with the prescribed fee.

2. Criminal history information. Subject to Title 5, chapter 341, the applicant shall provide criminal history record information.

§5511. License limited to persons

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

§5512. Changes

The licensee shall report any change of address or name or other material change in the conditions or qualifications set forth in the original application no later than 30 days after the change. Upon proper notice, the board's records must be changed and a new license issued for the unexpired term of the current license, if appropriate.

§5513. Denial of license

A license may be denied to an applicant:

1. Complete application. Who fails to submit a completed application within 30 days after being notified of the materials needed to complete the application;

2. Proof that applicant is trustworthy. Who fails to provide satisfactory proof that the applicant is trustworthy and competent to conduct forestry practices in a manner that safeguards the interests of the public;

3. Suspension or revocation of license. Who has had a professional or occupational license suspended or revoked for disciplinary reasons or an application rejected for reasons relating to untrustworthiness within 3 years prior to the date of application;

4. Conviction of crime. Subject to Title 5, chapter 341, who has been convicted of a Class A, B or C crime or a crime that bears on the practice of forestry; or

5. Meeting requirements of subchapter. Who fails to meet the professional qualifications for licensure as provided in this subchapter.

§5514. Intern forester

1. Scope of practice. An intern forester license entitles the holder to perform forestry practices under the sponsorship of a forester.

2. Professional qualifications. Each applicant for an intern forester license shall submit evidence of an associate's degree or a bachelor's degree from a curriculum in forestry or of graduation from a postgraduate curriculum in forestry leading to a degree higher than a bachelor's degree in a school or college

approved by the board. The board may grant a variance to an applicant who does not hold a degree pursuant to rules adopted by the board. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter II-A.

3. Filing with board. The requirements for licensure as an intern forester are as follows.

A. The internship may not commence until after the applicant has met the professional qualification requirements of subsection 2.

B. Applicants shall apply to and be approved by the board for internship prior to beginning their internship.

C. The applicant shall submit 3 references from persons not related to the applicant demonstrating the applicant's good character to work as an intern forester. One of these references must be from the individual who is proposed to serve as the sponsor.

4. Continuing education required. As a prerequisite to renewal of an intern forester license, the applicant must complete continuing education as set forth by rules adopted by the board.

5. Renewal. Licenses expire annually on December 31st or on a date the commissioner determines. The board shall issue a renewal license, subject to the limitations set forth in subsection 6, upon receipt of the written request for renewal, the annual fee and evidence of satisfactory completion of continuing education as set forth in subsection 4. Licenses may be renewed up to 90 days after the date of expiration upon payment of a late fee in addition to the renewal fee. A person who submits an application for renewal more than 90 days after the license has expired is subject to all requirements governing new applicants under this chapter.

6. Limited license term. Intern forester licenses may only be renewed for 5 annual terms. If after the 5th annual renewal term the intern forester has not qualified for licensure as a forester, the intern forester may reapply to recommence the internship process, but may not receive any credit towards completion of the new internship for work performed during the prior internship.

7. Endorsement of documents. Plans, maps and reports issued by the intern forester must be endorsed with the intern forester's name and license number during the life of the intern forester's license. By endorsing a document, the intern forester is representing that the document has been reviewed by the sponsor.

§5515. Forester

1. Scope of practice. A forester license entitles the holder to engage in the practice of forestry.

2. Professional qualification. The applicant must demonstrate compliance with the professional qualifications as set forth in section 5514, subsection 2.

3. Internship. An applicant for a forester license shall complete an internship as follows.

A. An applicant with an associate's degree or no degree shall demonstrate 48 months of forestry experience as an intern forester satisfactory to the board. Applicants must complete the 48 months within 6 calendar years prior to application.

B. An applicant with a bachelor's degree or higher shall demonstrate 24 months of forestry experience as an intern forester satisfactory to the board. Applicants must complete the 24 months within 6 calendar years prior to application.

4. Recommendation. The applicant shall submit references from 3 foresters familiar with the applicant's forestry practice. At least one of the references must be from the sponsor, unless the sponsor is unavailable as a reference through no fault of the applicant. An applicant exempted under subsection 5 shall submit references from 3 forestry professionals familiar with the applicant's forestry practice.

5. Exemption to internship; professional practice in another jurisdiction. Notwithstanding subsection 3, the board may waive the internship requirement, as set forth in subsection 3, for an applicant who has at least 24 months of lawful prior professional forestry practice in another jurisdiction within the 6-year period prior to application, as long as the practice is determined by the board to be substantially equivalent to the successful completion of forestry internship under subsection 3.

6. Examination. Each applicant for a forester license shall submit an application and examination fee and successfully pass an examination administered by the board designed to test an individual's knowledge to engage in the practice of forestry. Applicants shall meet all other qualifications for licensure prior to taking the examination.

7. Continuing education required. As a prerequisite to renewal of a forester license, applicants must complete continuing education as set forth by rules adopted by the board.

8. Renewal. Licenses expire annually on December 31st or on a date the commissioner determines. The board shall issue a renewal license upon receipt of the written request for renewal, the annual fee and

evidence of satisfactory completion of continuing education as set forth in subsection 7. Licenses may be renewed up to 90 days after expiration upon payment of a late fee in addition to the renewal fee. A person who submits an application for renewal more than 90 days after the license expiration date is subject to all requirements governing new applicants under this chapter.

9. Endorsement of documents. Plans, maps and reports issued by the forester must be endorsed with the forester's name and license number during the life of the forester's license.

10. Sponsor; supervisor. A forester:

A. May act as a sponsor for an intern forester pursuant to the requirements of section 5514 and rules adopted by the board; and

B. Must register with the board to supervise the activities of an unlicensed person pursuant to rules adopted by the board.

Rules adopted pursuant to this paragraph are major substantive rules as defined in Title 5, chapter 375, subchapter II-A.

§5516. Nonresidents; applicants licensed in another jurisdiction

1. Reciprocal agreements. The board may enter into reciprocal agreements with other jurisdictions that have substantially equivalent licensure laws and accord substantially equal reciprocal rights to residents licensed in good standing in this State.

2. Applicants licensed in another jurisdiction. An applicant who is licensed under the laws of another jurisdiction is governed by this subsection.

A. An applicant who is licensed under the laws of a jurisdiction that has a reciprocal agreement with the board may obtain a license upon the terms and conditions as agreed upon through the reciprocal agreement.

B. An applicant who is licensed in good standing under the laws of a jurisdiction that has not entered into a reciprocal agreement with the board may qualify for licensure by submitting evidence satisfactory to the board that the applicant has met all of the qualifications for licensure equivalent to those set forth by this subchapter for that level of licensure, including, but not limited to, passing the examination as required by section 5515, subsection 6.

C. All nonresident license applicants shall submit with the application an irrevocable consent that service of process on the applicant for an

action filed in a court of this State arising out of the applicant's activities as a forester in this State may be made by delivery of the process to the Director of the Office of Licensing and Registration if, in the exercise of due diligence, a plaintiff can not effect personal service upon the applicant.

Sec. 5. Maine Revised Statutes amended; revision clause. Wherever in the Maine Revised Statutes the words "State Board of Licensure for Professional Foresters" appear or reference is made to those words, they are amended to read and mean "Board of Licensure of Foresters" and the Revisor of Statutes shall implement this revision when updating, publishing or republishing the statutes.

Sec. 6. Transition provisions.

1. The Board of Licensure of Foresters is the successor in every way to the powers, duties and functions of the former State Board of Licensure for Professional Foresters.

2. All existing rules and procedures in effect, in operation or adopted in or by the State Board of Licensure for Professional Foresters or any of its administrative units or officers are hereby declared in effect and continue in effect until rescinded, revised or amended by the proper authority.

3. All existing contracts, agreements and compacts currently in effect in the State Board of Licensure for Professional Foresters continue in effect.

4. Any positions authorized and allocated subject to the personnel laws to the former State Board of Licensure for Professional Foresters are transferred to the Board of Licensure of Foresters and may continue to be authorized.

5. All records, property and equipment previously belonging to or allocated for the use of the former State Board of Licensure for Professional Foresters become, on the effective date of this Act, part of the property of the Board of Licensure of Foresters.

6. All existing forms, licenses, letterheads and similar items bearing the name of or referring to the State Board of Licensure for Professional Foresters may be utilized by the Board of Licensure of Foresters until existing supplies of those items are exhausted.

Sec. 7. Change license status. On the effective date of this Act the Board of Licensure of Professional Foresters shall change its records pertaining to licenses in effect at that time to reflect the changes in license status of licenses affected by the provisions of this Act and shall issue the appropriate licenses to implement the following:

1. Forester. Every person holding an active licensed professional forester license must be issued a forester license at the time the licensee next is issued a license.

2. Intern forester. Every person registered as an intern must be issued an intern forester license at the time the registrant next is issued a license.

3. Register intent to apply. An applicant for a forester license shall register the applicant's intent to meet the education provisions of the former Maine Revised Statutes, Title 32, chapter 75 by filing an application with the Board of Licensure of Foresters on or before April 30, 2002 that demonstrates the applicant's then-existing status towards meeting the education, or the substituted experience, licensure requirements under former Title 32, section 5012, subsection 1. Pursuant to rules adopted by the board, the applicant shall also demonstrate to the board on or before April 30, 2008 that the applicant has met all of the requirements of the former Title 32, chapter 75 by that date. With the exception of the education requirements, the applicant shall satisfy all of the licensure requirements of Title 32, chapter 76 in applying for a forester license. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

See title page for effective date.

CHAPTER 262

S.P. 521 - L.D. 1640

An Act to Conform the State's Financial Services Privacy Laws with Federal Law

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

PART A

Sec. A-1. 9-A MRSA §3-314 is enacted to read:

§3-314. Privacy of consumer financial information

A creditor shall comply with the provisions of the federal Gramm-Leach-Bliley Act, 15 United States Code, Section 6801 et seq. (1999) and the applicable implementing federal Privacy of Consumer Information regulations, as adopted by the Office of the Comptroller of the Currency, 12 Code of Federal Regulations, Part 40 (2001); the Board of Governors of the Federal Reserve System, 12 Code of Federal Regulations, Part 216 (2001); the Federal Deposit Insurance Corporation, 12 Code of Federal Regulations, Part 332 (2001); the Office of Thrift Supervi-

sion, 12 Code of Federal Regulations, Part 573 (2001); the National Credit Union Administration, 12 Code of Federal Regulations, Part 716 (2001); the Federal Trade Commission, 16 Code of Federal Regulations, Part 313 (2001); or the Securities and Exchange Commission, 17 Code of Federal Regulations, Part 248 (2001), if the creditor is a financial institution as defined in those regulations. This section is not intended to permit the release of health care information except as permitted by Title 22, section 1711-C or Title 24-A, chapter 24. This section does not apply to a supervised financial organization.

Sec. A-2. 9-A MRSA §9-310 is enacted to read:

§9-310. Privacy of consumer financial information

A creditor shall comply with the provisions of the federal Gramm-Leach-Bliley Act, 15 United States Code, Section 6801 et seq. (1999) and the applicable implementing federal Privacy of Consumer Information regulations, as adopted by the Office of the Comptroller of the Currency, 12 Code of Federal Regulations, Part 40 (2001); the Board of Governors of the Federal Reserve System, 12 Code of Federal Regulations, Part 216 (2001); the Federal Deposit Insurance Corporation, 12 Code of Federal Regulations, Part 332 (2001); the Office of Thrift Supervision, 12 Code of Federal Regulations, Part 573 (2001); the National Credit Union Administration, 12 Code of Federal Regulations, Part 716 (2001); the Federal Trade Commission, 16 Code of Federal Regulations, Part 313 (2001); or the Securities and Exchange Commission, 17 Code of Federal Regulations, Part 248 (2001), if the creditor is a financial institution as defined in those regulations. This section is not intended to permit the release of health care information except as permitted by Title 22, section 1711-C or Title 24-A, chapter 24.

Sec. A-3. 9-A MRSA §10-306 is enacted to read:

§10-306. Privacy of consumer financial information

A credit services organization shall comply with the provisions of the federal Gramm-Leach-Bliley Act, 15 United States Code, Section 6801 et seq. (1999) and the applicable implementing federal Privacy of Consumer Information regulations, as adopted by the Office of the Comptroller of the Currency, 12 Code of Federal Regulations, Part 40 (2001); the Board of Governors of the Federal Reserve System, 12 Code of Federal Regulations, Part 216 (2001); the Federal Deposit Insurance Corporation, 12 Code of Federal Regulations, Part 332 (2001); the Office of Thrift Supervision, 12 Code of Federal Regulations, Part 573 (2001); the National Credit Union Administration, 12